

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PLANNED PARENTHOOD OF GREATER) Docket No. A 15-CA-1058 SS
TEXAS FAMILY PLANNING AND)
PREVENTATIVE HEALTH SERVICES,)
INC., ET AL)
vs.) Austin, Texas
CHARLES SMITH, EXECUTIVE)
COMMISSIONER, TEXAS HEALTH AND)
HUMAN SERVICES COMMISSION, ET AL) January 18, 2017

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE SAM SPARKS
Volume 2 of 3

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1 **(Appearances Continued:)**

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25 Proceedings reported by computerized stenography, transcript
 produced by computer.

*LILY I. REZNIK, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (AUSTIN)*

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I N D E X				
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E X H I B I T S

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09:01:43 1 THE COURT: Are we through with the last witness? Yes,
09:01:59 2 we are and you're waiting -- this is your witness. Has counsel
09:02:04 3 got the information that I requested?

09:02:09 4 MS. SANDMAN: Yes, your Honor. I believe it's filed
09:02:12 5 already or will be very shortly.

09:02:15 6 MR. EVANS: It's not ready, but it would be ready by
09:02:18 7 midday.

09:02:19 8 THE COURT: That will be fine. Be sure and give a copy
09:02:22 9 to opposing counsel.

09:02:23 10 How about the state?

09:02:24 11 MR. STEPHENS: Your Honor, the state plans to call a
09:02:27 12 witness to address the availability of services. The Court's
09:02:30 13 question on services available in the areas where Planned
09:02:31 14 Parenthood is located.

09:02:32 15 THE COURT: That's good. I'd like to hear it. I still
09:02:34 16 want the number of clinics and the number of patients that you
09:02:41 17 see in those clinics.

09:02:43 18 MR. STEPHENS: Okay.

09:02:44 19 THE COURT: All right. Call your witness.

09:02:47 20 MR. STEPHENS: Your Honor, the state calls Stuart
09:02:49 21 Bowen.

09:02:58 22 THE COURT: Be sworn, please.

09:03:00 23 (Witness sworn.)

09:03:12 24 THE COURT: Tell us your full name, please, sir, and
09:03:16 25 spell your last.

09:03:17 1 THE WITNESS: Stuart Waddington Bowen, Jr., B-O-W-E-N.

09:03:22 2 And it's S-T-U-A-R-T.

09:03:24 3 THE COURT: You may proceed.

09:03:25 4 STUART W. BOWEN, JR., called by the Defendant, duly sworn.

09:03:25 5 DIRECT EXAMINATION

09:03:25 6 BY MR. STEPHENS:

09:03:26 7 Q. Mr. Bowen, good morning.

09:03:28 8 A. Good morning.

09:03:28 9 Q. Where are you currently employed?

09:03:30 10 A. The Texas Health and Human Services Commission.

09:03:32 11 Q. And what is your position at the Texas Health and Human
09:03:35 12 Services Commission?

09:03:36 13 A. Inspector General.

09:03:37 14 Q. And the Office of the Inspector General is part of the Texas
09:03:42 15 Health and Human Services Commission, right?

09:03:44 16 A. It is.

09:03:45 17 Q. Could you briefly describe for the Court your work
09:03:50 18 experience prior to becoming the Inspector General?

09:03:53 19 A. Yes. I came to Texas in 1984, for the first time, to become
09:03:59 20 an Air Force officer. I left Vanderbilt Law School after a year,
09:04:03 21 and then, after training at Lackland, went to Lowry Air Force
09:04:08 22 Base where I was trained as an intelligence officer, and then,
09:04:11 23 spent three years in the Federal Republic of Germany as an
09:04:15 24 indications warning officer, and then, leading NATO's air defense
09:04:18 25 analysis cell. And then, came back to Texas, back to San Antonio

09:04:22 1 and finished law school at St. Mary's. Came to Austin to clerk
09:04:27 2 for Raul -- Justice Raul Gonzalez on the Texas Supreme Court.
09:04:31 3 Then spent a little over two-and-a-half years as an assistant
09:04:34 4 attorney general of Texas in administrative law litigation. And
09:04:38 5 then, six years for Governor Bush on his legal staff, two years
09:04:42 6 in the White House as special assistant, and then, deputy
09:04:46 7 assistant, deputy staff secretary, and then, ten years as the
09:04:49 8 special inspector general for Iraq reconstruction.

09:04:53 9 THE COURT: Are you pulling your hair, Lily?

09:04:58 10 COURT REPORTER: Yes, sir.

09:05:00 11 MR. STEPHENS: A little slower.

09:05:01 12 THE COURT: This in law means slower.

09:05:04 13 THE WITNESS: I'm sorry. I thought you meant shorten
09:05:06 14 it. I'll slow down.

09:05:07 15 A. And then, since concluding my time in Iraq, I've -- I spent
09:05:13 16 a year as consulting on Iraq with the U.S. Chamber and that
09:05:16 17 Center for Strategic and International Studies. And then, in
09:05:20 18 February of 2015, I was appointed by Governor Abbott as Inspector
09:05:27 19 General.

09:05:28 20 Q. (BY MR. STEPHENS) Mr. Bowen, you've been the Inspector
09:05:31 21 General for approximately 22 months?

09:05:33 22 A. That's right.

09:05:33 23 Q. What is the mission of the Inspector General's Office?

09:05:37 24 A. Provided by statute. Our job is to root out fraud, waste
09:05:42 25 and abuse through audits, inspections and investigations of all

09:05:49 1 of the funds appropriated, federal and state, for the delivery of
09:05:54 2 health and human services in the state of Texas.

09:05:58 3 Q. And what is the IG's role with respect to Texas Medicaid?

09:06:04 4 A. It's a very integral role. I work very closely with the
09:06:08 5 executive commissioner, Charles Smith, and the entire Medicaid
09:06:14 6 CHIP division, the state Medicaid director, in coordinating on
09:06:20 7 our oversight work. The executive commissioner is strongly
09:06:25 8 committed to transparency and accountability in the delivery of
09:06:29 9 health and human services in the state of Texas.

09:06:32 10 THE COURT: Let's stay on track. Let's have question
09:06:35 11 and answer.

09:06:36 12 THE WITNESS: Yes, sir.

09:06:37 13 THE COURT: Any editorial is --

09:06:40 14 THE WITNESS: Yes, sir.

09:06:40 15 THE COURT: -- going to get on my nerves. Okay.

09:06:43 16 THE WITNESS: Understood.

09:06:44 17 Q. (BY MR. STEPHENS) Mr. Bowen, do you know what approximately
09:06:47 18 Texas Medicaid budget is?

09:06:49 19 A. A little over 30 billion.

09:06:51 20 Q. And do you know how many people are served by Texas
09:06:53 21 Medicaid?

09:06:54 22 A. About 4.3 million.

09:06:57 23 Q. And do you know approximately the amount of Medicaid funds
09:07:00 24 paid to Planned Parenthood in 2016?

09:07:03 25 A. About 3.4 million.

09:07:07 1 Q. How is the IG's responsibilities with respect to
09:07:10 2 investigating fraud, waste and abuse relate to Texas Medicaid?

09:07:16 3 A. They relate to Texas --

09:07:17 4 THE COURT: Before you answer that question, the 3.4
09:07:21 5 million paid out of the Medicare -- Texas Medicare budget, to
09:07:28 6 whom is it paid? Is it paid to individual clinics that show
09:07:34 7 reimbursement? Or is it paid -- how is it paid, do you know?

09:07:39 8 THE WITNESS: It is paid through contractual agreements
09:07:43 9 with providers, and pursuant to those agreements, the funds are
09:07:49 10 -- as you've said, serve as a reimbursement for services
09:07:53 11 delivered.

09:07:54 12 THE COURT: But how does it -- who makes the agreement?
09:07:58 13 I've been educated to some degree in this case that one entity
09:08:06 14 could have -- let's take Houston, for example. It runs eight
09:08:12 15 separate clinics in the Houston area. I'm not even sure what
09:08:16 16 that is yet. But does each clinic make a claim for the Medicaid
09:08:24 17 reimbursement that that clinic has?

09:08:27 18 THE WITNESS: It's actually driven by the member. The
09:08:30 19 member in Medicaid can choose where they would like to have
09:08:34 20 services delivered, and they can choose among enrolled Medicaid
09:08:38 21 providers, and then, pursuant to that engagement, the billing
09:08:45 22 goes to the state and then, it's paid that way.

09:08:50 23 THE COURT: Okay. Let's ask it this way. Let's say
09:08:55 24 I'm a person eligible for Medicaid and I go to the clinic in El
09:09:06 25 Paso, and I choose to go there because I live there, okay? And

09:09:13 1 then, the El Paso clinic provides the services and makes the
09:09:19 2 request or claim for reimbursement. Rather than the company --
09:09:30 3 the Planned Parenthood entity that has eight places, seven others
09:09:39 4 outside of El Paso. I'm trying to figure out who makes the
09:09:42 5 claim. Would it be the clinic wherein the services were
09:09:45 6 delivered by the person that chose to go there, or do you know?

09:09:48 7 THE WITNESS: Yeah. It's through a Texas provider
09:09:52 8 number, and that is sort of the billing number like two --

09:09:57 9 THE COURT: So it would go through --

09:09:59 10 THE WITNESS: Through the provider --

09:10:00 11 THE COURT: -- the clinic that provided the service.

09:10:02 12 THE WITNESS: That's right.

09:10:03 13 THE COURT: Thank you. Sorry for the interruption.

09:10:07 14 Q. (BY MR. STEPHENS) Mr. Bowen, I'd like to show you a copy of
09:10:09 15 Defendants' Exhibit 21, which was previously admitted into
09:10:12 16 evidence. Can you see it on the screen?

09:10:20 17 A. I can't see it on the screen. It's -- I could see the
09:10:26 18 title.

09:10:28 19 Q. Mr. Bowen, are you familiar with this document?

09:10:31 20 A. Yes.

09:10:31 21 Q. And could you describe to the Court what this document is?

09:10:35 22 A. It is just what we were talking about, a provider agreement.

09:10:40 23 Q. And who is the provider agreement between?

09:10:43 24 A. Planned Parenthood Gulf Coast and state of Texas.

09:10:50 25 Q. Okay. Does the Medicaid provider agreement set forth the

09:10:54 1 duties of the -- of the Texas Medicaid provider?

09:10:57 2 A. It does.

09:10:59 3 Q. Brian, could you zoom in on Section 1?

09:11:06 4 Mr. Bowen, in Section 1, are the responsibilities and
09:11:10 5 duties of the provider set forth under this agreement?

09:11:13 6 A. They are.

09:11:15 7 Q. And what are the obligations of the provider under a Texas
09:11:18 8 Medicaid provider agreement?

09:11:21 9 A. To comply with all of the standards, rules, statutes
09:11:27 10 contained within federal and state law as well as the Medicaid
09:11:31 11 provider procedures manual.

09:11:35 12 Q. And does the provider agreement -- the Medicaid provider
09:11:38 13 agreement set forth the actions or circumstances by which the
09:11:43 14 agreement may be terminated?

09:11:44 15 A. It does.

09:11:46 16 Q. Brian, could you go to Section 6.1? And are those actions
09:11:53 17 or circumstances set forth in Section 6.1?

09:11:56 18 A. They are.

09:11:57 19 Q. And could you describe those circumstances for the Court in
09:12:00 20 which the agreement may be terminated?

09:12:03 21 A. Yes. Violation of -- a program violation, which is
09:12:07 22 tantamount to a violation of the rules standards in the federal
09:12:11 23 and state Medicaid laws as well as the Medicaid provider
09:12:16 24 agreements and Medicaid provider manual.

09:12:21 25 Q. Did each of the Planned Parenthood providers involved in

09:12:23 1 this lawsuit enter into a Medicaid provider agreement with the
09:12:26 2 terms we just reviewed?

09:12:28 3 A. They did.

09:12:31 4 Q. Brian, could you bring up Defendants' Exhibit 20, which is
09:12:36 5 also previously admitted?

09:12:37 6 Mr. Bowen, are you familiar with this document?

09:12:39 7 A. I am.

09:12:40 8 Q. Could you describe this document for the Court?

09:12:43 9 A. This is the cover of the Texas Medicaid Provider Procedures
09:12:48 10 Manual.

09:12:50 11 Q. And does the Texas Medicaid Providers Manual provide
09:12:54 12 additional guidance regarding the rules that apply to Texas
09:12:57 13 Medicaid providers?

09:12:59 14 A. It does.

09:13:04 15 Q. And does it also provide additional guidance regarding those
09:13:08 16 rules and how they apply to providers?

09:13:10 17 A. Yes.

09:13:11 18 Q. Brian, could you go to Section 1, the italicized language?

09:13:18 19 Mr. Bowen, are you familiar with this section of the
09:13:21 20 Texas Medicaid Providers Manual?

09:13:22 21 A. I am.

09:13:25 22 Q. And could you describe how it sets forth the rules and
09:13:29 23 require -- that are required for compliance with Texas Medicaid?

09:13:32 24 A. Yes. It specifies and refers to the Texas Administrative
09:13:37 25 Code sanctions language relevant to my oversight work that

09:13:44 1 requires providers to comply with all that's laid out in this
09:13:50 2 manual with regard to the delivery of healthcare services through
09:13:56 3 the Texas Medicaid program.

09:13:58 4 Q. Does it also require compliance with accepted medical
09:14:01 5 community standards?

09:14:02 6 A. It does.

09:14:07 7 Q. Mr. Bowen, does the IG have statutory authority to take
09:14:11 8 enforcement measures against Texas Medicaid providers?

09:14:14 9 A. We do.

09:14:16 10 Q. Okay. Could you describe the IG's -- describe generally the
09:14:21 11 IG's statutory authority for enforcement measures against
09:14:24 12 providers?

09:14:24 13 A. Yes. We have the authority to engage in audits,
09:14:32 14 investigations and inspections with regard to all funds delivered
09:14:37 15 for -- with the support of delivery of health and human services
09:14:42 16 in the state of Texas, and pursuant to that, we carry out a
09:14:48 17 variety of oversight activities.

09:14:51 18 Q. Brian, could you bring up Defendants' Exhibit 11, which is
09:14:54 19 previously admitted into evidence?

09:14:56 20 Mr. Bowen, are you familiar with Section 371.1603 of
09:15:02 21 the Texas Administrative Code?

09:15:03 22 A. Yes, I am.

09:15:04 23 Q. And does this provision authorize the IG to take enforcement
09:15:08 24 measures, or an affiliate of a provider, based on an
09:15:11 25 investigation or finding?

09:15:13 1 A. It does.

09:15:15 2 Q. Brian, could you bring up Defendants' Exhibit 5?

09:15:22 3 Mr. Bowen, are you familiar with this Section 371.1703
09:15:28 4 of the Texas Administrative Code?

09:15:29 5 A. Yes, I am.

09:15:30 6 Q. And does this section give the IG authority to remove or
09:15:36 7 dis-enroll a Texas Medicaid provider?

09:15:37 8 A. It does.

09:15:40 9 Q. Brian, could you bring up Defendants' Exhibit 5, which was
09:15:45 10 also previously admitted into evidence? Sorry, we have that up,
09:15:50 11 so let's scroll down to Section C6.

09:15:55 12 Mr. Bowen, does this section also provide the
09:16:01 13 circumstances under which the IG is authorized to terminate the
09:16:05 14 enrollment of a provider?

09:16:06 15 A. Yes, it does.

09:16:07 16 Q. Okay.

09:16:08 17 THE COURT: I don't want to interrupt you making a
09:16:09 18 record, but I don't think there's an issue that the state cannot
09:16:20 19 withdraw a provider. I mean, that's pretty first-grade law.
09:16:29 20 It's the reasons for it and, you know, you're just spinning your
09:16:34 21 wheels. I know, I will assume everybody in the audience knows,
09:16:40 22 that the state can un-enroll a provider.

09:16:42 23 MR. STEPHENS: This is my last question on the
09:16:44 24 statutory.

09:16:44 25 THE COURT: That just shows you how slow I'm getting in

09:16:48 1 my old age. Go ahead.

09:16:49 2 MR. STEPHENS: I'll move quickly with the last
09:16:51 3 question.

09:16:52 4 Q. (BY MR. STEPHENS) A Medicaid provider can be -- enrollment
09:16:55 5 could be terminated for a program violation; is that right?

09:16:58 6 A. Yes.

09:16:58 7 Q. And a Medicaid provider could also be terminated if the
09:17:03 8 provider commits an act to which sanctions, damages, penalties,
09:17:06 9 or liability could be assessed.

09:17:07 10 A. That's right.

09:17:12 11 Q. Is Planned Parenthood a Texas Medicaid provider?

09:17:15 12 A. Yes.

09:17:15 13 Q. And in carrying out the IG's mission, did you conduct a
09:17:19 14 review of Planned Parenthood's activities?

09:17:21 15 A. I did.

09:17:21 16 Q. Could you describe generally the IG's review of Planned
09:17:27 17 Parenthood's activities?

09:17:27 18 A. Yes. In the summer of 2015, late summer, I was reviewing
09:17:35 19 some outstanding audit findings regarding Planned Parenthood.

09:17:41 20 MR. WATKINS: Your Honor, we object. There a number of
09:17:43 21 Planned Parenthood entities, and I can't tell which one he's
09:17:45 22 talking about. He can't just talk about Planned Parenthood. He
09:17:47 23 needs to talk about one of those ID numbers that he's supposed to
09:17:51 24 be investigating. So we object to this.

09:17:52 25 THE COURT: So your objection is what?

09:17:54 1 MR. WATKINS: That he has not identified who the
09:17:56 2 witness is testifying about.

09:17:58 3 THE COURT: I sustain that. You may do that.

09:18:00 4 Q. (BY MR. STEPHENS) Okay. Mr. Bowen, could you describe, did
09:18:03 5 the IG conduct a review of Planned Parenthood Gulf Coast?

09:18:06 6 A. Yes.

09:18:07 7 Q. And did the IG conduct a review of Planned Parenthood
09:18:11 8 Greater Texas?

09:18:12 9 A. Yes, we did.

09:18:12 10 Q. And did the IG conduct a review of Planned Parenthood South
09:18:17 11 Texas?

09:18:17 12 A. Yes, we did.

09:18:18 13 Q. Okay. Could you describe for the Court the substance
09:18:22 14 generally of those reviews?

09:18:23 15 A. Well, regarding those three, there were outstanding audit
09:18:27 16 findings that had been accomplished, and I was in the process of
09:18:29 17 reviewing them and pursuing -- reopening them when the evidence,
09:18:41 18 specifically, a videotape, the evidence in this case, a videotape
09:18:45 19 of the demonstrated -- that was evidence of program violations
09:18:49 20 came into the possession of the agency.

09:18:51 21 Q. And did you -- has the IG reviewed that video?

09:18:56 22 A. Yes, with my legal staff and -- yes, we did.

09:19:03 23 Q. And what was the result of the IG's review of the video and
09:19:08 24 Planned Parenthood's activities?

09:19:09 25 A. We concluded that the evidence contained in that --

09:19:13 1 MR. WATKINS: Objection, your Honor. I can't tell
09:19:14 2 which Planned Parenthood he's talking about. They don't get to
09:19:17 3 just lump them all together. Some people are on the video and
09:19:20 4 some aren't. I need to know which Planned Parenthood entity he
09:19:23 5 is reviewing and auditing and trying to testify about.

09:19:26 6 THE COURT: And I would like to know which tape you're
09:19:31 7 talking about. Are you talking about the eight-hour tape?

09:19:34 8 THE WITNESS: Yes, sir.

09:19:35 9 THE COURT: That answers one question. So if you're
09:19:42 10 talking about the audit, I want you to specify which entity. As
09:19:49 11 far as the video's concerned, I'll let you testify, of course,
09:19:57 12 what you saw, what you did.

09:19:59 13 THE WITNESS: Yes, sir.

09:20:00 14 THE COURT: All right.

09:20:00 15 A. I'm not addressing the audit at all now. I'm just
09:20:03 16 addressing the video and in that video, as we know, it involves
09:20:08 17 Planned Parenthood Gulf Coast.

09:20:20 18 Q. (BY MR. STEPHENS) Mr. Bowen, did you issue a final notice of
09:20:23 19 termination to -- terminating Planned Parenthood Gulf Coast's
09:20:28 20 enrollment in Texas Medicaid?

09:20:29 21 A. I did.

09:20:30 22 Q. And did you issue a final notice of termination, terminating
09:20:34 23 Planned Parenthood Greater Texas' enrollment in Texas Medicaid?

09:20:38 24 A. I did.

09:20:38 25 Q. And did you issue a final notice of termination, terminating

09:20:41 1 Planned Parenthood South Texas' enrollment in Texas Medicaid?

09:20:44 2 A. I did.

09:20:46 3 Q. Brian, could you bring up a copy of Defendants' Exhibit 1?

09:20:49 4 THE COURT: Okay. Before you go, go back and give me
09:20:53 5 that list, Lily. I got the last two.

09:20:53 6 COURT REPORTER: Planned Parenthood Gulf Coast, Planned
09:21:16 7 Parenthood Greater Texas, and then, South Texas.

09:21:16 8 THE COURT: You may proceed.

09:21:18 9 Q. (BY MR. STEPHENS) Mr. Bowen, did you issue this final notice
09:21:22 10 of termination on December 20th, 2016?

09:21:23 11 A. I did.

09:21:24 12 Q. Does the final notice of termination at Defendants' Exhibit
09:21:26 13 1 set forth the basis for your decision to terminate these
09:21:31 14 entities from Texas Medicaid?

09:21:33 15 A. It does.

09:21:33 16 Q. Brian, could you go to page 2, I believe the second
09:21:40 17 paragraph? Sorry, the second full paragraph. The one below
09:21:47 18 that.

09:21:51 19 THE COURT: If it helps you, counsel, I've got it right
09:21:53 20 here, and I read it at least six times.

09:21:57 21 MR. STEPHENS: Okay.

09:21:57 22 THE COURT: As a matter of fact, if you'll notice, I've
09:21:59 23 underlined a lot of it. And I only say that to help you on time.
09:22:07 24 Okay.

09:22:09 25 Q. (BY MR. STEPHENS) Mr. Bowen, in the letter -- in the

09:22:12 1 paragraph highlighted from this letter, you indicate that you
09:22:15 2 relied on the video; is that correct?
09:22:17 3 A. That's right.
09:22:18 4 Q. And you also indicate that you consulted with the IG's Chief
09:22:22 5 Medical Officer; is that right?
09:22:24 6 A. That's correct.
09:22:27 7 Q. Who is the IG's Chief Medical Officer?
09:22:29 8 A. Dr. Ted Spears.
09:22:31 9 Q. And what is his role at the IG?
09:22:33 10 A. He is the chief advisor on all medical issues with regard to
09:22:40 11 the execution of our oversight program.
09:22:43 12 THE COURT: And spell his last name.
09:22:45 13 THE WITNESS: S-P-E-A-R-S.
09:22:50 14 THE COURT: Thank you.
09:22:51 15 THE WITNESS: You're welcome.
09:22:52 16 Q. (BY MR. STEPHENS) Why did you consult with Dr. Spears in the
09:22:55 17 course of your review of the video and other evidence?
09:22:59 18 A. That's our standard operating procedure. He is the chief
09:23:02 19 advisor on medical issues such as these regarding program --
09:23:06 20 potential program violations.
09:23:07 21 Q. Did you ask Dr. Spears to watch the video referenced in this
09:23:12 22 paragraph of your letter?
09:23:13 23 A. I did.
09:23:14 24 Q. And do you know whether Dr. Spears watched the full video
09:23:17 25 referenced in this letter?

09:23:18 1 A. He did.

09:23:18 2 Q. Did Dr. Spears give you his opinion regarding what he saw on
09:23:27 3 the video?

09:23:28 4 A. Yes, he did.

09:23:30 5 THE COURT: That answers the question.

09:23:33 6 Q. (BY MR. STEPHENS) Did Dr. Spears' opinion inform your
09:23:36 7 decision that Planned Parenthood had violated medical and ethical
09:23:40 8 standards?

09:23:40 9 A. It did.

09:23:41 10 Q. Okay. How did it inform your decision?

09:23:45 11 A. Well, he is a doctor of long -- many years good standing,
09:23:50 12 over 30 years of practice here in Texas. He is aware of and
09:23:57 13 understands the required medical and ethical standards of
09:24:01 14 practice in the state of Texas and thus, is qualified to offer
09:24:08 15 and advise -- offer his opinion and advise me on issues like
09:24:11 16 this.

09:24:11 17 MR. WATKINS: Objection, your Honor. It would be for
09:24:13 18 the Court to determine whether he's qualified to give an opinion.

09:24:16 19 THE COURT: Well, that dawned on me when he said that,
09:24:18 20 but we'll just consider it.

09:24:24 21 Q. (BY MR. STEPHENS) Mr. Bowen, have you reviewed the video
09:24:27 22 that is listed as Defendants' Exhibit 2?

09:24:30 23 A. Yes.

09:24:32 24 Q. And is the video listed as Defendants' Exhibit 2 the video
09:24:36 25 that is referred to in your December 20, 2016 final notice of

09:24:40 1 termination letter?

09:24:41 2 A. It is.

09:24:44 3 Q. And is the video listed as Defendants' Exhibit 2 the video
09:24:49 4 that you relied on and cited in your letter as evidence that
09:24:52 5 Planned Parenthood violated accepted medical and ethical
09:24:56 6 standards?

09:24:56 7 A. Yes.

09:24:58 8 Q. Approximately how long is the video, listed as Defendants'
09:25:01 9 Exhibit 2, in reference to this letter?

09:25:02 10 A. About eight-and-a-half hours.

09:25:05 11 Q. And how many times did you watch the full video listed as
09:25:08 12 Defendants' Exhibit 2?

09:25:08 13 A. Five times. Sorry, five times. And I've read a transcript
09:25:12 14 of it that many times, as well.

09:25:15 15 Q. When you watched the video that's listed as Defendants'
09:25:19 16 Exhibit 2, did you see anything in the video that caused you to
09:25:22 17 question whether the video was a true and accurate reflection of
09:25:25 18 the events shown in the video?

09:25:27 19 A. No, I didn't --

09:25:28 20 MR. WATKINS: Objection, your Honor. I don't think the
09:25:30 21 witness is qualified to determine whether or not a video is
09:25:33 22 adequate or accurate, or not. I mean, that calls for special
09:25:36 23 testing, and he hasn't testified that he knows anything about
09:25:39 24 testing videos.

09:25:40 25 THE COURT: He's not offered as an expert. His

09:25:44 1 question is, did you see anything, and he said he did not see
09:25:46 2 anything. That does not mean it was not there. I suspect that
09:25:52 3 an expert could render a different opinion one way or the other.
09:25:56 4 But he has the right to testify what he saw. Go ahead.
09:26:02 5 Q. (BY MR. STEPHENS) Mr. Bowen, was there evidence in the video
09:26:06 6 that you relied on for purposes of your conclusion that the video
09:26:12 7 was a true and accurate reflection of the events depicted in the
09:26:17 8 video?
09:26:18 9 A. Yes.
09:26:19 10 Q. Okay. And could you describe for the Court what you saw?
09:26:21 11 MR. WATKINS: Same objection, your Honor.
09:26:23 12 THE COURT: I sustain the objection and strike the
09:26:25 13 answer.
09:26:26 14 Q. (BY MR. STEPHENS) Mr. Bowen, could you describe for the
09:26:29 15 Court what you saw in the video that demonstrated to you that it
09:26:33 16 was -- or what it demonstrated to you as to where the video was
09:26:37 17 taken?
09:26:38 18 A. Yes. At the outset of the video, it reveals the arrival of
09:26:48 19 the videographer at Planned Parenthood Gulf Coast, as you see,
09:26:54 20 the front of the building, it's marked. The door is marked with
09:27:01 21 Planned Parenthood Gulf Coast and Planned Parenthood Center for
09:27:07 22 Choice, all the indicia that it's authentic with regard to it
09:27:12 23 being an actual video of that location and what's occurring
09:27:17 24 within that building substantiated in the video.
09:27:22 25 Q. Did you see in the video employees introduce themselves?

09:27:28 1 A. I did.

09:27:29 2 Q. Okay. And did they state their names on the video?

09:27:32 3 A. They did.

09:27:32 4 Q. And were you in the courtroom yesterday when Melissa Farrell
09:27:36 5 testified?

09:27:36 6 A. I was.

09:27:37 7 Q. Was -- and you saw Melissa Farrell?

09:27:40 8 A. Yes.

09:27:40 9 Q. And is that the same person that you saw in the video?

09:27:44 10 A. Yes, it was. It -- yes.

09:27:50 11 Q. Do you recall whether Ms. Farrell introduced herself as the
09:27:54 12 director of research in the video?

09:27:55 13 A. I do.

09:27:56 14 Q. And do you recall her testimony yesterday saying that she's
09:28:00 15 the director of research at Planned Parenthood Gulf Coast?

09:28:01 16 A. I do.

09:28:05 17 Q. Judge, I would like to offer into evidence Defendants'
09:28:08 18 Exhibit 2, the video relied on by Mr. Bowen.

09:28:12 19 MR. WATKINS: May I take the witness on voir dire for a
09:28:14 20 moment, your Honor?

09:28:15 21 THE COURT: You may.

09:28:16 22 VOIR DIRE EXAMINATION

09:28:17 23 BY MR. WATKINS:

09:28:17 24 Q. Exhibit 2 -- let me hand you Exhibit 2 that we're talking
09:28:42 25 about. Now, do you know the dates and times when each of those

09:28:47 1 videos was recorded?

09:28:57 2 A. I recall I believe it was April 15, but I don't know the
09:29:02 3 precise times. I remember in watching the video that there is a
09:29:07 4 date and timestamp that is chronologically synchronous from each
09:29:16 5 of these clips.

09:29:18 6 Q. There are 17 videos identified on this list?

09:29:23 7 A. That's correct.

09:29:24 8 Q. Is it your testimony that all 17 of those were all taken the
09:29:27 9 same day?

09:29:27 10 A. Yes.

09:29:28 11 Q. Okay. And did you take all 17 --

09:29:30 12 A. Well, I should say -- yes, yes, yes.

09:29:33 13 Q. And if you take all 17 of these together, you get the
09:29:37 14 eight-and-a-half hours that you've talked about.

09:29:38 15 A. Yes, sir.

09:29:38 16 Q. Did you watch any other videos other than these 17?

09:29:45 17 A. No. These are the ones from the exhibits.

09:29:49 18 Q. You didn't see any on YouTube?

09:29:52 19 A. Well, I did see some on YouTube, but that's not what I
09:29:56 20 relied on for this letter.

09:29:58 21 Q. And you're telling --

09:29:59 22 THE COURT: Whoa, whoa. You know, you've impressed me
09:30:05 23 as great background and smart, but when he said, did you see any
09:30:11 24 others, you should have caught on to this other.

09:30:15 25 THE WITNESS: Yes, sir. You're right. You're right.

09:30:16 1 I didn't see any others that informed my decision.

09:30:21 2 THE COURT: Okay. Well --

09:30:22 3 THE WITNESS: That's what I should say.

09:30:23 4 THE COURT: I suspect that the lawyer would ask you
09:30:25 5 that.

09:30:26 6 THE WITNESS: Yes. I did not see -- I did not rely on
09:30:28 7 any other videos for my decision.

09:30:30 8 THE COURT: Now, let me tell you, you're not in charge
09:30:35 9 of the question.

09:30:36 10 THE WITNESS: Yes, sir.

09:30:37 11 THE COURT: Have you ever testified before?

09:30:39 12 THE WITNESS: Yes, I have.

09:30:39 13 THE COURT: I thought you had. You know, they're in
09:30:41 14 charge of the questioning.

09:30:42 15 THE WITNESS: Yes, sir.

09:30:42 16 THE COURT: All right. Just answer the question. All
09:30:45 17 right.

09:30:49 18 Q. (BY MR. WATKINS) I believe in your designation, did you not
09:30:53 19 state that watching the videos animated your decision?

09:30:57 20 A. Yes, sir.

09:30:58 21 Q. Okay. Did anything that you watched on YouTube animate your
09:31:02 22 decision?

09:31:03 23 A. No.

09:31:03 24 Q. So it didn't bother you what you saw on YouTube. You just
09:31:07 25 relied on this.

09:31:08 1 A. That's right.

09:31:09 2 Q. And the first one you ever looked at was one of these
09:31:12 3 eight -- or one of the 17 on this page. You didn't look at the
09:31:15 4 YouTube first, you didn't look at any other versions of those
09:31:18 5 videotapes, but five the time you looked at the one that animated
09:31:22 6 your decision.

09:31:24 7 A. That's right.

09:31:25 8 Q. Okay. No further questions, your Honor.

09:31:27 9 THE COURT: Do you have any objection to 2?

09:31:31 10 MR. WATKINS: Well, we have objection based -- yes,
09:31:37 11 sir. We have objections based on the lack of validity if he's --

09:31:44 12 THE COURT: Validity, this is the testimony it's
09:31:47 13 something that he saw and formed the basis of his decision. So I
09:31:52 14 don't think you can dream of a good enough objection to keep it
09:31:56 15 out.

09:31:57 16 MR. WATKINS: Well, the question is --

09:31:58 17 THE COURT: It's being tendered right now for something
09:32:01 18 he saw and was the basis of his opinion.

09:32:06 19 MR. WATKINS: Our objection would be -- and I
09:32:07 20 understand what's going to happen to it. Our objection is --

09:32:09 21 THE COURT: So let's stop wasting time.

09:32:11 22 MR. WATKINS: Yes, sir.

09:32:12 23 THE COURT: All right. I overrule any objection. To
09:32:14 24 is in as -- 2 is in as something that he saw and made a
09:32:22 25 determination on. Doesn't have anything to do with.

09:32:44 1 MR. STEPHENS: Brian, could you bring up Defendants'

09:32:46 2 Exhibit 1?

09:32:46 3 THE COURT: How is 2 going to be tendered?

09:32:51 4 MR. STEPHENS: It's on a thumb drive.

09:32:53 5 THE CLERK: I have it.

09:32:54 6 MR. STEPHENS: It's on that. I think that's called a
09:32:56 7 thumb drive.

09:32:57 8 THE COURT: Beat me. Okay.

09:32:57 9 DIRECT EXAMINATION (Resumed)

09:33:03 10 BY MR. STEPHENS:

09:33:03 11 Q. Brian, could you go to page 2?

09:33:13 12 Mr. Bowen, in the final notice of termination letter --

09:33:17 13 MR. WATKINS: Your Honor, I'm going to make an
09:33:19 14 objection to if we're not going to look at it. In other words, I
09:33:23 15 don't think they get to just stick the video into the record and
09:33:25 16 we don't know what parts they're relying on or what parts he
09:33:28 17 relied opinion. And if they're going to offer eight-and-a-half
09:33:30 18 hours worth of video, I don't think we can do anything with it
09:33:34 19 unless we see the eight-and-a-half hours he looked at.

09:33:37 20 MR. STEPHENS: The entire footage?

09:33:40 21 THE COURT: The questions that the state wants to ask
09:33:45 22 are the state's questions. Your objection is a statement, and I
09:33:54 23 overrule the statement. You have full powers of
09:33:57 24 cross-examination and to show whatever erroneous reliance he may
09:34:06 25 have had. I fear that I'm going to have to look at this eight

09:34:12 1 hours. So you might just assume that we're going to look at
09:34:17 2 eight hours.

09:34:18 3 MR. WATKINS: All right.

09:34:19 4 THE COURT: But, you know, I can't foresee what's going
09:34:28 5 to happen tomorrow, or the next day, or the next day. But you
09:34:33 6 can cross-examine him. He's already said that he relied on the
09:34:39 7 -- and I suspect he knows the history of that, or part of it, in
09:34:43 8 any event. It's been all over the papers and I am aware of it,
09:34:49 9 too. Just as Will Rogers said, I read it.

09:34:53 10 MR. WATKINS: My objection, your Honor, is
09:34:54 11 specifically, they've got eight hours of time. They've got
09:34:57 12 seven-and-a-half hours. I don't think they get to use what's in
09:35:00 13 the eight hours of tape unless we watch it as part of their
09:35:03 14 seven-and-a-half hours. That's what I've been thinking the whole
09:35:05 15 time. And if the testimony is, he looked at the eight hours and
09:35:10 16 that formed his opinion and they've now offered the eight hours
09:35:13 17 into evidence, I don't see how we can do anything with it unless
09:35:16 18 we watch the eight hours as a part of their seven-and-a-half.

09:35:18 19 THE COURT: Okay. Well, you can make that argument.

09:35:21 20 MR. WATKINS: Yes, sir.

09:35:24 21 THE COURT: You can also cross it and find out exactly
09:35:27 22 what he relied on and what he didn't.

09:35:32 23 Q. (BY MR. STEPHENS) Mr. Bowen, in your final notice of
09:35:34 24 termination letter, you state that you relied on the video,
09:35:37 25 Defendants' Exhibit 2, right?

09:35:38 1 A. That's right.

09:35:39 2 Q. Okay. Do you recall specific parts of the video that's
09:35:43 3 marked as Defendants' Exhibit 2 that demonstrated a history or
09:35:49 4 willingness to alter abortion procedures to procure fetal tissue?

09:35:53 5 A. I do.

09:35:53 6 Q. Mr. Bowen, I would like to show you part of the video marked
09:36:01 7 as Defendants' Exhibit 2, admitted as Defendants' Exhibit 2.
09:36:06 8 Brian, could you go to 7:59:02?

09:36:11 9 (Audio and video file played.)

09:37:56 10 Q. Mr. Bowen, did you rely on that portion of the video?

09:37:59 11 A. Yes, I did.

09:38:00 12 Q. As the basis for your decision to terminate Planned
09:38:03 13 Parenthood's enrollment?

09:38:03 14 A. Yes.

09:38:04 15 THE COURT: Now, how are you going to identify that,
09:38:08 16 that one section?

09:38:11 17 MR. STEPHENS: It's the timestamp, which I read into
09:38:15 18 the record, which is at 7:59:02.

09:38:21 19 THE COURT: And when did it finish?

09:38:23 20 MR. STEPHENS: At 8:00:43.

09:38:28 21 MR. WATKINS: I'm sorry, say again.

09:38:30 22 MR. STEPHENS: 8:00:43.

09:38:32 23 MR. WATKINS: Thank you.

09:38:36 24 THE COURT: Okay. The next one that you're going to
09:38:42 25 use, let's do the opening and conclusion.

09:38:47 1 MR. STEPHENS: Okay. So each one, I'll identify at the
09:38:49 2 outset by the timestamp.

09:38:51 3 THE COURT: Thank you.

09:38:52 4 Q. (BY MR. STEPHENS) Brian, could you please bring up 8:00:54
09:38:58 5 to 8:01:50?

09:39:03 6 (Audio and video file played.)

09:40:06 7 Q. Mr. Bowen, did you rely on that footage, as well?

09:40:08 8 A. I did.

09:40:09 9 Q. Brian, could you bring up 13:56:54 through 13:59:10?

09:40:22 10 (Audio and video file played.)

09:42:43 11 Q. Mr. Bowen, is that also footage from Defendants' Exhibit 2
09:42:46 12 that you relied on?

09:42:49 13 A. Yes, it is.

09:42:52 14 Q. Brian, could you bring up 14:03:11 through 14:03:50 from
09:43:00 15 Defendants' Exhibit 2?

09:43:01 16 (Audio and video file played.)

09:43:40 17 Q. Mr. Bowen, is that also footage from the video that you
09:43:44 18 relied on?

09:43:45 19 A. Yes, it is.

09:43:46 20 Q. Brian, could you bring up 14:17:03 through 14:17:55?

09:43:56 21 (Audio and video file played.)

09:44:52 22 Q. Mr. Bowen, is that also footage that you relied on?

09:44:56 23 A. Yes, it is.

09:45:00 24 Q. Brian, could you bring up 14:20:10 through 14:20:56 from
09:45:07 25 Defendants' Exhibit 2?

09:45:08 1 (Audio and video file played.)

09:45:59 2 Q. Mr. Bowen, is that also video footage that you relied on as
09:46:04 3 the basis for your final notice of termination letter?

09:46:06 4 A. Yes, it is.

09:46:08 5 Q. And Brian, could you bring up 14:24:57 through 14:25:26?

09:46:29 6 (Audio and video file played.)

09:46:49 7 Q. Mr. Bowen, are those video clips that you relied on as the
09:46:56 8 basis for your decision that Planned Parenthood had altered
09:47:01 9 abortion procedures for research purposes?

09:47:03 10 A. Yes.

09:47:08 11 Q. And in the final notice of termination, you stated that
09:47:10 12 altering abortion procedures for research purposes violates
09:47:14 13 accepted medical and ethical standards; is that right?

09:47:16 14 A. That's right.

09:47:17 15 Q. And how did you reach your conclusion that altering abortion
09:47:21 16 standards -- abortion procedures violates accepted medical and
09:47:27 17 ethical standards?

09:47:28 18 A. First, it violates the standards of -- expected of providers
09:47:33 19 in Texas pursuant to Dr. Ted Spears' opinion in this case. It's
09:47:38 20 buttressed by federal law, which provides standards regarding
09:47:43 21 this, as well, a federal statute addressing fetal -- the fetal
09:47:49 22 tissue research area states exactly what -- exactly the standard.

09:47:58 23 Q. Did federal law inform your judgment that altering abortion
09:48:04 24 procedures violates accepted medical and ethical standards?

09:48:07 25 A. Yes, it did.

09:48:09 1 Q. Mr. Bowen, did you see evidence in the video, admitted as
09:48:14 2 Defendants' Exhibit 2, that researchers had performed abortions
09:48:17 3 at Planned Parenthood for the purpose of procuring fetal tissue
09:48:20 4 for their own research?

09:48:22 5 A. I did.

09:48:24 6 Q. Brian, could you bring up 8:04:08 through 8:05:35?

09:48:33 7 (Audio and video file played.)

09:50:07 8 Q. Mr. Bowen, is that footage you relied on for your conclusion
09:50:10 9 that the video indicated that researchers had also performed
09:50:14 10 abortions at Planned Parenthood to procure fetal tissue for their
09:50:18 11 own research?

09:50:18 12 A. Yes.

09:50:20 13 Q. Brian, could you bring up 9:46:56 through 9:48:30?

09:50:44 14 (Audio and video file played.)

09:51:29 15 Q. Mr. Bowen, did you also rely on the footage we just saw?

09:51:33 16 A. Yes, I did.

09:51:36 17 Q. Brian, could you bring up 14:30:19 through 14:30:59?

09:51:59 18 (Audio and video file played.)

09:53:28 19 Q. Mr. Bowen, did the individual video clips we just saw inform
09:53:33 20 your judgment that Planned Parenthood violated accepted medical
09:53:38 21 and ethical standards?

09:53:39 22 A. Yes, they did.

09:53:39 23 Q. And did federal law inform your judgment that Planned
09:53:42 24 Parenthood violated medical and ethical standards by researchers
09:53:46 25 performing abortions to obtain fetal tissue for their own

09:53:49 1 research?

09:53:49 2 A. Yes, it did.

09:53:53 3 Q. Mr. Bowen, in your final termination letter, you also

09:53:56 4 indicated that Planned Parenthood may be procuring fetal tissue

09:54:00 5 for valuable consideration. Do you recall that?

09:54:02 6 A. Yes.

09:54:04 7 Q. What did you see in the video that indicated to you that

09:54:08 8 Planned Parenthood may be procuring fetal tissue for valuable

09:54:11 9 consideration?

09:54:12 10 A. There were a number of exchanges in the course of the video

09:54:18 11 regarding remuneration for --

09:54:20 12 MR. WATKINS: We object to this testimony because

09:54:22 13 there's nothing in the termination letter that talks about making

09:54:27 14 money, not being reimbursed. That's not one of the grounds they

09:54:31 15 put in the termination letter; therefore, it's irrelevant.

09:54:35 16 MR. STEPHENS: I could bring up the termination letter.

09:54:38 17 THE COURT: I've read it several times. Do you have

09:54:41 18 anything other than I can bring it up?

09:54:42 19 MR. STEPHENS: It says, potentially for valuable

09:54:44 20 consideration. That was my question.

09:54:49 21 THE COURT: Well, I'll permit the answer.

09:54:52 22 A. Yes. There --

09:54:53 23 MR. WATKINS: I'll object to the exhibit, Judge.

09:55:25 24 I stand corrected, your Honor. It's on page --

09:55:27 25 THE COURT: I've already overruled the objection. But

09:55:29 1 I do like it in the record that you stand up.

09:55:33 2 MR. WATKINS: Okay. A little bit.

09:55:36 3 Q. (BY MR. STEPHENS) Mr. Bowen, what did you see in the video
09:55:39 4 that indicated to you a willingness to procure fetal tissue for
09:55:44 5 valuable consideration?

09:55:46 6 A. The term "financially beneficial" was repeatedly brought up
09:55:50 7 in the course of the dialogue. And there were discussions about
09:55:56 8 how this engaging in this agreement might be financially
09:56:03 9 beneficial for Planned Parenthood Gulf Coast, and the fact that
09:56:08 10 that was an issue that the board was pushing and, indeed, there
09:56:15 11 was interest from Planned Parenthood Federation of America to
09:56:18 12 pursue such activities that were financially beneficial. That
09:56:26 13 was the phrase.

09:56:27 14 Q. Mr. Bowen, in your letter, you also indicated that you
09:56:31 15 relied on materials provided to the state by the United States
09:56:36 16 House of Representatives Select Investigative Panel; is that
09:56:38 17 right?

09:56:38 18 A. That's right.

09:56:41 19 Q. I'd like to show you a document of Defendants' Exhibit 68.

09:56:51 20 Mr. Bowen, are you familiar with this document?

09:56:54 21 A. I am.

09:56:55 22 Q. Could you describe this document for the Court?

09:56:59 23 A. This was a referral from that House committee regarding
09:57:03 24 their investigation of these issues.

09:57:06 25 Q. And what is the date of this document?

09:57:07 1 A. December 1st, 2016.

09:57:10 2 Q. And did you receive a copy of this document?

09:57:13 3 A. I did.

09:57:14 4 Q. Did you review it?

09:57:15 5 A. I did.

09:57:16 6 Q. And is this the document that was cited in your December 20,
09:57:21 7 2016 final notice of termination letter?

09:57:24 8 A. Yes.

09:57:26 9 Q. Your Honor, we offer -- state offers Defendants' Exhibit 68
09:57:32 10 into evidence.

09:57:32 11 MR. WATKINS: No objection.

09:57:33 12 THE COURT: Received.

09:57:36 13 Q. (BY MR. STEPHENS) Brian, could you bring up Defendants'
09:57:40 14 Exhibit 61?

09:57:42 15 Mr. Bowen, are you familiar with this document?

09:57:44 16 A. I am.

09:57:45 17 Q. And could you describe for the Court this document?

09:57:51 18 A. This is the cover sheet to the Select Investigative Panel
09:57:56 19 report.

09:57:58 20 Q. And, Brian, could you scroll down through the document
09:58:04 21 quickly? To the last page.

09:58:14 22 Mr. Bowen, do you know how long this document is?

09:58:18 23 A. Do I know how long it is?

09:58:20 24 Q. How many pages?

09:58:22 25 A. You have page 413 there. Yes.

09:58:25 1 Q. And is this a document that you've reviewed?

09:58:27 2 A. It is.

09:58:29 3 Q. Your Honor, the state offers Defendants' Exhibit 61 into
09:58:32 4 evidence.

09:58:39 5 MR. WATKINS: No objection if it's offered for the
09:58:41 6 purposes of something he reviewed.

09:58:44 7 THE COURT: It's received.

09:58:51 8 Q. (BY MR. STEPHENS) Mr. Bowen, in Defendants' Exhibit 1, the
09:58:54 9 final notice of termination letter, you also reference evidence
09:58:57 10 of misrepresentations uncovered by the United States House of
09:59:02 11 Representatives Select Investigative Panel.

09:59:04 12 A. That's right.

09:59:08 13 Q. Could you describe for the Court the nature of those
09:59:11 14 misrepresentations as referred to in your letter?

09:59:15 15 A. Yes. The report documents a visit by the Texas Ranger to
09:59:22 16 Planned Parenthood Gulf Coast discussions regarding contracting
09:59:26 17 activity between Planned Parenthood Gulf Coast and the Baylor
09:59:30 18 College of Medicine for the procurement of fetal tissue. And the
09:59:36 19 Texas Ranger was told that the independent review board at Baylor
09:59:42 20 College of Medicine had not approved the offer from Planned
09:59:48 21 Parenthood Gulf Coast regarding engaging in fetal tissue
09:59:52 22 procurement. That was not accurate.

09:59:58 23 Q. Brian, could you bring up Defendants' Exhibit 79?

10:00:06 24 Mr. Bowen, is this a document that you reviewed and
10:00:10 25 relied on?

10:00:11 1 A. Yes, it is.

10:00:14 2 Q. And could you read the subject line of this document?

10:00:19 3 A. Pediatrics research proposal, Dr. Paust, Baylor College of
10:00:24 4 Medicine IRB approval obtained.

10:00:26 5 Q. Your Honor, the state would offer Defendants' Exhibit 79
10:00:30 6 into evidence.

10:00:31 7 MR. WATKINS: No objection.

10:00:33 8 THE COURT: It's received.

10:00:34 9 Q. (BY MR. STEPHENS) Brian, could you scroll up the top of this
10:00:37 10 document?

10:00:39 11 Mr. Bowen, could you describe the top e-mail as it
10:00:43 12 relates to the e-mail that you had just read the subject line
10:00:47 13 from?

10:00:48 14 A. It's a response from Melissa Farrell at Planned Parenthood
10:00:53 15 Gulf Coast thanking Dr. Parikh for the news that the IRB had
10:00:58 16 approved the agreement.

10:01:02 17 Q. Brian, could you go to Defendants' Exhibit 81 at page 4?

10:01:12 18 Mr. Bowen, are you familiar with this document?

10:01:16 19 A. I am.

10:01:16 20 Q. Is this also a document that you reviewed and relied on as a
10:01:19 21 basis or as referenced in your December 20, 2016 final notice of
10:01:24 22 termination letter?

10:01:25 23 A. It is.

10:01:31 24 Q. Brian, could you focus on 3.17?

10:01:36 25 Mr. Bowen, could you describe what you read in this

10:01:41 1 report as it relates to the e-mails that we just saw?

10:01:48 2 A. It is -- it's part of the Ranger's report and I think the --
10:01:59 3 summarizing his interview with the representative from Gulf
10:02:07 4 Coast. And the last sentence is -- he was told that the
10:02:11 5 institutional review board had not yet given approval for the
10:02:14 6 Baylor or Rice studies.

10:02:17 7 Q. Okay. When you stated in your December 20, 2016 letter that
10:02:22 8 evidence uncovered by the United States House of Representatives
10:02:25 9 Select Investigative Panel regarding misrepresentations supported
10:02:30 10 your decision, is this the document you were referring to?

10:02:35 11 A. It is.

10:02:36 12 Q. And was Defendants' Exhibit 79 also a document that you were
10:02:40 13 referring to?

10:02:40 14 A. Yes.

10:02:43 15 Q. Your Honor, the state would offer Defendants' Exhibit 81
10:02:45 16 into evidence.

10:02:46 17 MR. WATKINS: No objection.

10:02:47 18 THE COURT: Received.

10:02:49 19 Q. (BY MR. STEPHENS) Mr. Bowen, did you see anything in the
10:03:00 20 video, admitted as Defendants' Exhibit 2, that demonstrated that
10:03:04 21 Planned Parenthood Gulf Coast and Planned Parenthood Center for
10:03:08 22 Choice are affiliates?

10:03:10 23 A. Yes, I did.

10:03:12 24 Q. And what evidence did you see in the video that Planned
10:03:15 25 Parenthood Gulf Coast and Planned Parenthood Center For Choice

10:03:17 1 are affiliates?

10:03:19 2 A. They're co-located in the same building. The signage at the
10:03:24 3 entryway links them together, the personnel working at the front
10:03:33 4 desk in the foyer and security all serve both entities, and just
10:03:46 5 in the building itself, they're close to one another.

10:03:55 6 Q. Was there other evidence that was not in the video that
10:03:59 7 you've considered in reaching your decision that Planned
10:04:02 8 Parenthood Gulf Coast and Planned Parenthood Center For Choice
10:04:04 9 are affiliates?

10:04:07 10 A. Yes. Their website, for example, I think we saw yesterday,
10:04:14 11 shows the linkage between the two, but I had seen that before
10:04:18 12 that e-mailing one leads to another. The Center For Choice goes
10:04:25 13 to Planned Parenthood Gulf Coast and -- and there were other
10:04:33 14 matters in the discussion between -- in the video that indicated
10:04:40 15 clear linkages between the director of research for Planned
10:04:43 16 Parenthood Gulf Coast and the activities of the Center For
10:04:47 17 Choice.

10:04:47 18 Q. And, Mr. Bowen, did you also see evidence in the video or
10:04:52 19 did you review evidence -- other evidence that indicated that
10:04:58 20 Planned Parenthood Gulf Coast, Planned Parenthood Greater Texas,
10:05:02 21 and Planned Parenthood South Texas are affiliates?

10:05:07 22 A. Yes. There was discussion then. Also, there's overlapping
10:05:11 23 leadership CEOs and board membership that interweaves some of
10:05:16 24 these affiliates, as well.

10:05:17 25 Q. Okay. And do you know whether they are all affiliates of

10:05:21 1 Planned Parenthood Federation of America?

10:05:23 2 A. They are. They do -- that is indicated in the video, quite
10:05:28 3 clearly, that Planned Parenthood Federation of America provides
10:05:32 4 guidance, policies, and monitors, particularly with regard to
10:05:38 5 fetal tissue activity, every aspect of each of these affiliates.

10:05:47 6 Q. Brian, could you bring up Defendants' Exhibit 2 at 8:05:44
10:05:54 7 through 8:05:54?

10:06:01 8 (Audio and video file played.)

10:06:16 9 Q. Mr. Bowen, is that video footage evidence that you relied on
10:06:22 10 as part of your conclusion that Planned Parenthood Gulf Coast,
10:06:25 11 Planned Parenthood Greater Texas, and Planned Parenthood South
10:06:28 12 Texas have had doctors that travel between the locations?

10:06:33 13 A. Yes.

10:06:36 14 Q. Brian, could you on Defendants' Exhibit 2 bring up 12:26:50
10:06:41 15 through 12:27:35?

10:06:45 16 (Audio and video file played.)

10:07:34 17 Q. Mr. Bowen, is that also footage or evidence that you relied
10:07:39 18 on in reaching your conclusion that Planned Parenthood Gulf
10:07:43 19 Coast, Planned Parenthood Greater Texas, and Planned Parenthood
10:07:47 20 South Texas are affiliates?

10:07:47 21 A. Yes.

10:07:50 22 Q. Mr. Bowen, as the Inspector General for the Texas Health and
10:07:53 23 Human Services Commission, in your judgment, did Planned
10:07:57 24 Parenthood violate medical and ethical standards?

10:07:59 25 A. Yes.

10:08:00 1 Q. And do those violations of medical and ethical standards
10:08:04 2 amount to program violations that justified disenrollment from
10:08:08 3 the Texas Medicaid program?

10:08:09 4 A. They do.

10:08:11 5 Q. Pass the witness, your Honor.

10:08:35 6 CROSS-EXAMINATION

10:08:35 7 BY MR. WATKINS:

10:08:53 8 Q. Mr. Bowen, let's see if we can agree on some basic
10:09:02 9 principles. The state has no right to terminate a provider who
10:09:04 10 provides medical treatment if they are a qualified provider.

10:09:11 11 A. Yes.

10:09:12 12 Q. And we can agree that qualified means, quote, to be capable
10:09:16 13 of performing the needed medical services in a professionally
10:09:20 14 competent, safe, legal and ethical manner.

10:09:23 15 A. Yes.

10:09:24 16 Q. So the state can't kick somebody out if they're providing
10:09:29 17 abortions that way, right?

10:09:31 18 A. If they're providing abortions that way?

10:09:35 19 Q. Yes. In a -- do you think the state just has a right to
10:09:39 20 stop people from performing abortions?

10:09:42 21 A. I don't think that the Medicaid program funds the provision
10:09:48 22 of abortions.

10:09:49 23 Q. All right. So you're saying they're already kicked out.
10:09:53 24 You're not paying for abortions. The state is not paying for
10:09:57 25 abortions?

10:09:57 1 A. I think that was -- that's already in the record.

10:10:00 2 Q. Okay. Well, and you agree with that. You agree with that.

10:10:03 3 A. Yes. I believe that's in the record.

10:10:05 4 Q. All right. Now, the question then is, there are, however,

10:10:09 5 clinics which perform abortions that do not receive Medicaid

10:10:13 6 payments, right?

10:10:14 7 A. That's right.

10:10:15 8 Q. Okay. And some of them, Planned Parenthood and some of them

10:10:18 9 aren't.

10:10:18 10 A. That's right.

10:10:19 11 Q. Okay. Now, but is it legal to use fetal tissue for

10:10:28 12 research?

10:10:30 13 A. Pursuant to law, yes.

10:10:31 14 Q. Okay. So we're agreed there's nothing wrong with using

10:10:35 15 fetal tissue for research.

10:10:37 16 A. Within the prescribed limits identified by law.

10:10:40 17 Q. Okay. Now, is it legal to get reimbursed for providing

10:10:45 18 fetal tissue to a researcher, provided it is a reasonable

10:10:49 19 reimbursement for expenses?

10:10:51 20 A. Pursuant to what the law permits, yes, sir.

10:10:53 21 Q. Okay. Now, you were talking about federal law which you let

10:11:01 22 inform some of your decisions, right?

10:11:03 23 A. That's right.

10:11:04 24 Q. Okay. And you do know about 1396a(23), which gives to the

10:11:08 25 patient the right to choose the provider.

10:11:10 1 A. That's right.

10:11:11 2 Q. Okay. And the state can't stop that patient under federal
10:11:15 3 law from choosing a qualified provider.

10:11:18 4 A. That's correct.

10:11:19 5 Q. Now, on your letter of termination, let's look at it. Now,
10:11:36 6 let me give you a copy.

10:11:54 7 Now, it's addressed, is it not, to three entities? Is
10:12:03 8 that correct?

10:12:03 9 A. It is.

10:12:04 10 Q. All right. Now, first of all, it's from the Office of the
10:12:07 11 Inspector General. That's true?

10:12:08 12 A. Yes, sir.

10:12:09 13 Q. Okay. And it's dated December 20, 2016?

10:12:12 14 A. That's correct.

10:12:13 15 Q. Okay. And there are three, Gulf Coast, Greater Texas and
10:12:20 16 San Antonio, and that's also South Texas, right?

10:12:23 17 A. That is correct.

10:12:24 18 Q. Okay. Now, each of those entities has other entities that
10:12:30 19 are part of that entity; is that correct?

10:12:32 20 A. That's right.

10:12:32 21 Q. Okay. Now, you heard testimony that there was no power or
10:12:37 22 control between Planned Parenthood Gulf Coast and those other two
10:12:41 23 entities. Did you hear that testimony?

10:12:44 24 A. Yes.

10:12:45 25 Q. Do you have anything to contradict that?

10:12:48 1 A. I'm sorry? Please rephrase the question.

10:12:50 2 Q. Okay. I will.

10:12:52 3 Is there any evidence that you know of that Planned
10:12:55 4 Parenthood Gulf Coast has any power or control over Greater
10:13:00 5 Texas?

10:13:00 6 A. No.

10:13:01 7 Q. Okay. Is there any evidence that Greater Texas has any
10:13:05 8 power and control over Gulf Coast?

10:13:07 9 A. No.

10:13:08 10 Q. Is there any evidence that any one of these three has any
10:13:11 11 power or control over the other two?

10:13:13 12 A. No.

10:13:14 13 Q. Okay. Can you give me the name of a doctor who might have
10:13:18 14 worked at more than one of these?

10:13:22 15 A. Amna Dermish.

10:13:25 16 Q. Okay. And do you know what that doctor did at each clinic?

10:13:31 17 A. I know the doctor worked at both. I don't know the
10:13:35 18 specifics of that doctor's activities.

10:13:37 19 Q. Okay. Did that doctor work at both at the same time?

10:13:41 20 A. That I don't know.

10:13:42 21 Q. Okay. There's nothing wrong, then, for a doctor to work at
10:13:45 22 one, leave that one and then, go work at another one, is there?

10:13:48 23 A. Well, sure.

10:13:50 24 Q. And you don't know whether that's what happened or not?

10:13:52 25 A. That's right.

10:14:02 1 Q. I'm going to take a look at Defendants' Exhibit 68. And I
10:14:22 2 can hand you Defendants' Exhibit 68. Do you recognize that?
10:14:31 3 A. Yes, I do.
10:14:33 4 Q. Now, you testified that that was a referral from the
10:14:37 5 committee. Is that a referral from the committee or referral
10:14:41 6 from just one person?
10:14:45 7 A. This is a referral relevant to the committee report from the
10:14:49 8 chairman of the committee.
10:14:50 9 Q. But it is from the chairman. It's not from the committee.
10:14:55 10 A. The chairman signed this. Yes. That's correct.
10:14:57 11 Q. Okay. And then, let's look at the last page, the paragraph
10:15:01 12 of the last page. Do you see that sentence at the top of that
10:15:08 13 page?
10:15:08 14 A. I do.
10:15:10 15 Q. All right. Based on the facts outlined above and the
10:15:13 16 supporting documents, I. It doesn't say the committee. It says
10:15:22 17 I.
10:15:23 18 A. Yes, it does.
10:15:24 19 Q. Now, do you know if the committee voted on this referral?
10:15:27 20 A. I don't.
10:15:29 21 Q. Do you know if the committee actually approved this referral
10:15:32 22 being sent out?
10:15:33 23 A. I don't.
10:15:34 24 Q. Okay. It's I. And she says -- oh, and by the way, this was
10:15:38 25 the same lady that referred to the Harris County District

10:15:41 1 Attorney for the same sort of investigation and got them
10:15:44 2 indicted, that is, got the people indicted.

10:15:47 3 MR. STEPHENS: Objection, your Honor.

10:15:50 4 THE COURT: Is there a reason?

10:15:51 5 MR. STEPHENS: It's not relevant to his decision to
10:15:53 6 terminate Planned Parenthood from Texas Medicare.

10:15:55 7 THE COURT: Well, go find out. The objection is
10:15:58 8 overruled.

10:15:59 9 Q. (BY MR. WATKINS) Now, I urge --

10:16:02 10 THE COURT: Was there an answer to that question?

10:16:04 11 MR. WATKINS: I don't think so.

10:16:06 12 A. Please ask it again.

10:16:07 13 Q. (BY MR. WATKINS) This is the same lady that made the
10:16:09 14 referral down to the Houston District Attorney's Office and got
10:16:12 15 the videographer indicted?

10:16:14 16 A. Is that a question?

10:16:15 17 Q. Yes.

10:16:15 18 A. I don't know.

10:16:16 19 Q. Okay. I urge your office to conduct a thorough
10:16:21 20 investigation of whether or not PPGC, that's Gulf Coast, violated
10:16:26 21 these statutes, and if you agree to such violations, then take
10:16:31 22 appropriate action. She asked you -- she's not telling you, you
10:16:34 23 ought to do something. She's saying, here's this, please
10:16:37 24 investigate, right? Just her. Not the committee.

10:16:43 25 What investigation did you do?

10:16:46 1 A. This was a letter to the Attorney General of Texas, Ken
10:16:52 2 Paxton. The letter was not directed to me to make investigation.
10:16:59 3 The report, however, was useful and informed my decisionmaking.
10:17:04 4 Q. Well, now, my question to you is, you did not do any
10:17:07 5 investigation. The Attorney General didn't ask you to
10:17:09 6 investigate in response to this letter.
10:17:11 7 A. That's right.
10:17:12 8 Q. So you didn't -- you, the IG, did no investigations after
10:17:19 9 December 1st, 2016, at the time that you did the termination, of
10:17:23 10 any of the allegations that were made in the committee report.
10:17:27 11 A. That's right.
10:17:34 12 Q. Now, were you the OIG that issued the termination notice
10:17:45 13 back in 2015?
10:17:47 14 A. You mean you're referring to the October 19th letter?
10:17:50 15 Q. Yes.
10:17:51 16 A. Yes. I signed the October 19th letter.
10:17:55 17 Q. All right. So you had made whatever allegations were in
10:18:00 18 that letter prior to the time you ever saw the congressional
10:18:04 19 report.
10:18:06 20 A. Yes.
10:18:06 21 Q. Okay. And as you said, viewing this video animated your
10:18:14 22 intention to terminate or some language like that. Do you
10:18:18 23 remember that?
10:18:18 24 A. Yes.
10:18:20 25 Q. Well, when did you first get the videos?

10:18:26 1 A. The agency, as I said, received the videos in September of
10:18:34 2 2015.

10:18:35 3 Q. Okay. And when did you issue the first notice?

10:18:40 4 A. October 19th.

10:18:44 5 THE COURT: What year?

10:18:45 6 THE WITNESS: Of 2015.

10:18:47 7 Q. (BY MR. WATKINS) All right.

10:18:48 8 A. It was not a notice of termination. It began a process of
10:18:52 9 review. Judge, just to be clear that there's a distinction
10:18:59 10 between the December 20th letter, which is a final notice of
10:19:01 11 termination, and the October 19th letter, which as the first
10:19:04 12 sentence of that letter states, effected a process, began a
10:19:08 13 process.

10:19:10 14 Q. Well, unless something happened, they were going to
10:19:12 15 terminate.

10:19:13 16 A. It began the process. That's correct.

10:19:15 17 Q. No, no. That's not my question specifically.

10:19:18 18 Unless something changed the direction the state was
10:19:20 19 intending going on that day, they were going to get terminated
10:19:23 20 unless something else happened to stop it.

10:19:25 21 A. That's right.

10:19:26 22 Q. Okay. Now, then, had you -- how many times had you viewed
10:19:29 23 the video prior to issuing that letter?

10:19:32 24 A. The October 19th letter?

10:19:34 25 Q. No.

10:19:35 1 A. Or the December 20th? The December 20th letter, I viewed it
10:19:38 2 five times and also read -- have read a transcript.

10:19:42 3 Q. On the October one in 2015, how many times have you viewed
10:19:47 4 it?

10:19:48 5 A. I relied on legal staff that had viewed it and advised me on
10:19:52 6 it.

10:19:52 7 Q. Okay.

10:19:52 8 THE COURT: Wait, wait. Read the question back --

10:19:57 9 A. Yes. I'm sorry. I did not review that -- the video but
10:20:01 10 before the issuance of that letter. I relied on legal staff that
10:20:05 11 had.

10:20:05 12 Q. (BY MR. WATKINS) Okay. So what they told you, did that
10:20:08 13 animate your interest to issue that letter?

10:20:11 14 A. Yes.

10:20:12 15 Q. Okay. But you didn't do it yourself, right? Now --

10:20:18 16 A. That's right. I have since watched it.

10:20:24 17 Q. Well, you watched it. You, yourself, watched it after you
10:20:27 18 had already sent out the letter telling you were going to
10:20:30 19 terminate them.

10:20:33 20 A. Yes. I've watched it between -- between October 19th and
10:20:38 21 December 20th, I watched it five times.

10:20:41 22 THE COURT: Read the question back, Lily.

10:20:49 23 (Last question read back.)

10:20:52 24 THE COURT: "Yes" or "No."

10:20:56 25 THE WITNESS: Yes.

10:20:58 1 Q. (BY MR. WATKINS) Now, then, between the time that you got
10:21:02 2 the -- well, before you issued the 2016 termination notice, you
10:21:11 3 know which one I'm talking about?

10:21:12 4 A. Yes. December 20th.

10:21:14 5 Q. Right. What investigations did your office do of the
10:21:18 6 Planned Parenthood entities that you sent that letter to?

10:21:23 7 A. We engaged in a number of activities that included the
10:21:30 8 collection of documents. We also engaged in forensic
10:21:37 9 investigations of billing practices and records, and we also
10:21:48 10 reviewed the video.

10:21:49 11 Q. Did those investigations, prior to the issuance of the
10:21:57 12 December 2016, indicate to you that any doctor had altered an
10:22:00 13 abortion procedure to obtain fetal tissue?

10:22:04 14 A. Based on the evidence identified in the video, yes.

10:22:07 15 Q. Oh, which doctor is identified in the video of altering
10:22:13 16 abortion procedures in order to obtain fetal tissue?

10:22:17 17 A. I don't know which doctor.

10:22:20 18 Q. Well, my question to you, did you find anybody who had
10:22:23 19 actually done it? Did you ever find anybody who actually altered
10:22:27 20 an abortion procedure to obtain fetal tissue for research? Any
10:22:31 21 particular individual that was employed by Planned Parenthood?

10:22:35 22 A. I understand the question. I'm sorry. And the answer's no.

10:22:44 23 Q. Do you have any idea how many dollars -- tax dollars the
10:22:48 24 state of Texas spent on all of those investigations to try to
10:22:51 25 find that information and never found any of it?

10:22:54 1 MR. STEPHENS: Objection, your Honor. This isn't
10:22:55 2 relevant.

10:22:59 3 THE COURT: It's impressive.

10:23:01 4 MR. WATKINS: And irritating to me, but I guess it's
10:23:04 5 not relevant, Judge.

10:23:04 6 THE COURT: It is not. I agree.

10:23:10 7 Q. (BY MR. WATKINS) Now, then, we talked a bit about
10:23:23 8 misrepresentations, and I only heard one. That was the
10:23:28 9 statements that the Texas Ranger made in his report about what
10:23:33 10 somebody said to him.

10:23:33 11 A. That's right.

10:23:34 12 Q. Okay. No other misrepresentations. All the hours and money
10:23:38 13 that you spent investigating Planned Parenthood, that's the
10:23:42 14 misrepresentation.

10:23:43 15 A. Yeah. That's right.

10:23:45 16 Q. Now, do you know the difference between a misrepresentation
10:23:49 17 and a mistake?

10:23:51 18 A. Yes, I do.

10:23:52 19 Q. Okay. And you can't kick somebody out of Medicaid for
10:23:55 20 making a mistake.

10:23:57 21 A. That's right.

10:23:58 22 Q. Okay. And the difference between a mistake and a
10:24:00 23 misrepresentation is that you know what you're telling somebody
10:24:03 24 is wrong.

10:24:05 25 A. That's right.

10:24:06 1 Q. Okay. Now, if we go -- it's about the IRB, right?

10:24:22 2 A. That's right.

10:24:22 3 Q. And the statement that I remember you talking about is the

10:24:32 4 institutional review board had not yet given approval for the

10:24:36 5 Baylor or Rice study.

10:24:37 6 A. That's right.

10:24:38 7 Q. Did you interview the person who made that statement?

10:24:41 8 A. I did not.

10:24:42 9 Q. Did anybody investigate the state of mind of that speaker

10:24:46 10 that made that statement?

10:24:47 11 A. No.

10:24:48 12 Q. Do you have any idea whether she knew or didn't know that

10:24:51 13 that was wrong?

10:24:53 14 A. I don't.

10:24:54 15 Q. Okay. So you don't know whether it's a mistake or a

10:24:56 16 misrepresentation.

10:24:58 17 A. That's right.

10:24:59 18 Q. And so, all of the misrepresentations allegations contained

10:25:03 19 in that termination letter and all of the publicity in the state

10:25:06 20 about misrepresentations is related only to something that you

10:25:09 21 don't know whether or not it's a misrepresentation.

10:25:18 22 A. I don't know whether it was a mistake.

10:25:20 23 Q. You don't know whether it was a misrepresentation.

10:25:23 24 A. But I know it was an incorrect statement to a peace officer.

10:25:26 25 Q. Well, now it's a mistake about what? About the IRB?

10:25:32 1 A. About -- yes. And, Judge, may I speak to that issue?

10:25:40 2 Q. Let me ask the question. What do you want to say about that

10:25:42 3 IRB?

10:25:43 4 THE COURT: There's going to be plenty of cross.

10:25:46 5 THE WITNESS: Okay. Thank you.

10:25:47 6 Q. (BY MR. WATKINS) What do you want to say about that IRB?

10:25:48 7 A. Well, the fact -- well, as you well know, Mr. Watkins, that

10:25:53 8 the committee report has an extensive appendix relevant to

10:25:59 9 exchanges between the Baylor College of Medicine and Planned

10:26:04 10 Parenthood Gulf Coast, and that extensive history documents a --

10:26:13 11 two years of negotiations on pursuing this agreement. The offer

10:26:18 12 was made, the offer was accepted by the Baylor College of

10:26:23 13 Medicine after the IRB met.

10:26:29 14 It was certainly a legal matter. Certainly something

10:26:33 15 that would require attention in the execution of a contract, and

10:26:38 16 therefore, it's not unreasonable to be concerned about that

10:26:45 17 statement that was made to a peace officer.

10:26:49 18 Q. Okay. Now, the IRB was on a study that was never contracted

10:26:54 19 for, right?

10:26:59 20 A. The contract was disavowed. Yes. That's right.

10:27:03 21 Q. Well, no. Was the contract ever signed by Planned

10:27:06 22 Parenthood?

10:27:06 23 A. It was not finally executed.

10:27:09 24 Q. There's a difference between disavowed and there not ever

10:27:13 25 being a contract, isn't there? I mean, you were just being cute

10:27:15 1 when you said disavowed. You know the contract was never entered
10:27:18 2 into, right?

10:27:20 3 A. It was not finalized. There was an offer, there was an
10:27:23 4 acceptance that Baylor College of Medicine thought they had, but
10:27:25 5 then, there wasn't -- they didn't.

10:27:26 6 Q. So the study was never done.

10:27:28 7 A. That's right.

10:27:29 8 Q. And so, you say that there is a statement to a Texas Ranger
10:27:35 9 about whether or not an IRB was approved or not that you don't
10:27:39 10 know whether it was a mistake or not about a research project
10:27:43 11 that was never entered into and a research project that was never
10:27:47 12 done.

10:27:47 13 MR. STEPHENS: Objection, your Honor. That's a
10:27:49 14 compound question.

10:27:49 15 THE COURT: Actually, it's an argument.

10:27:52 16 MR. STEPHENS: It's an argument.

10:27:53 17 THE COURT: Let's take a break. Ten minutes.

10:41:43 18 (Recess.)

10:41:46 19 THE COURT: Do you understand you're still under oath,
10:41:48 20 sir?

10:41:48 21 THE WITNESS: Yes, sir.

10:41:49 22 THE COURT: All right, sir. You may proceed.

10:41:51 23 Q. (BY MR. WATKINS) You are aware, are you not, of the
10:42:01 24 difference between abortion procedures and clinical procedures?

10:42:04 25 A. Yes, sir.

10:42:05 1 Q. Okay. And there's nothing wrong with altering clinical
10:42:10 2 procedures in order to provide research information to an
10:42:13 3 investigator?

10:42:15 4 A. I think that's true.

10:42:16 5 Q. Okay. So, for example, on the first videotape, the first
10:42:23 6 clip, was there anything in that clip that you remember that told
10:42:28 7 you whether or not the comments that the speaker was making about
10:42:31 8 altering abortion procedures or altering clinical procedures --

10:42:35 9 MR. STEPHENS: Objection, your Honor. Could he refer
10:42:37 10 to which clip it is by the timestamp so that we know?

10:42:42 11 MR. WATKINS: 7:59:02 to 8:00:43. That was the first
10:42:49 12 clip.

10:42:49 13 A. May we look at it again?

10:42:51 14 Q. (BY MR. WATKINS) Sure. Wait, before we do, at the time that
10:42:57 15 you viewed it, did you know the difference between altering
10:43:00 16 abortion procedures and altering clinical procedures?

10:43:02 17 A. Yes.

10:43:03 18 Q. Okay. Where did you learn them?

10:43:08 19 A. I have -- I think that, first of all, it's axiomatic.
10:43:13 20 Second of all, there was distinctive -- there was federal law
10:43:17 21 relevant to altering abortion procedures that, as you well know.
10:43:23 22 Sorry.

10:43:24 23 Q. Let's look at it. 7:59:02 to 8:00:43.

10:43:46 24 (Audio and video file played.)

10:45:22 25 Q. She didn't answer that question, did she?

10:45:31 1 A. Well, to answer your earlier question --

10:45:32 2 Q. No, no, no, no. She did not answer that last question. The

10:45:35 3 video cut off before she answered.

10:45:39 4 A. Well, that's true.

10:45:40 5 Q. Okay. Now, product of conception. What is that?

10:45:45 6 A. Those are fetal tissue remains.

10:45:47 7 Q. All right. And so, they can alter -- didn't that video clip

10:45:52 8 indicate that they can alter the procedures for the products of

10:45:55 9 conception and doesn't say anything about altering the abortion

10:45:58 10 procedures?

10:45:59 11 A. I disagree.

10:46:00 12 Q. Okay. How -- what is it in that videotape --

10:46:03 13 A. We can watch it again. The last 30 seconds, to me, clearly

10:46:09 14 indicated a discussion about altering the procedures. She uses

10:46:13 15 that word "procedure." I don't see she was talking about

10:46:16 16 clinical procedures when she says, alter the procedures to secure

10:46:19 17 specific fetal tissue.

10:46:20 18 Q. Okay. Well, I mean, you could have fetal tissue which

10:46:25 19 you've already extracted, right?

10:46:27 20 A. But that's not what was going on here.

10:46:29 21 Q. We'll get to that.

10:46:31 22 A. Sorry. Excuse me.

10:46:32 23 Q. You could have fetal tissue that you've already extracted

10:46:34 24 and you have a certain standard procedure, right? I mean, you're

10:46:38 25 going to do something with it. Now, a researcher wants a

10:46:41 1 particular part of that stuff because they're doing liver
10:46:45 2 research or they're doing something else. You could alter the
10:46:48 3 clinical procedure in order to get the part of the product of
10:46:50 4 conception that has been extracted in order to give to the
10:46:53 5 researcher, right?

10:46:55 6 A. You could.

10:46:55 7 Q. Okay. Let's look at the video. Same clip.

10:47:02 8 (Audio and video file played.)

10:48:48 9 Q. You cut it off before she answered.

10:48:52 10 A. The last 25 seconds of that clip was referring to altering
10:48:56 11 an abortion procedure.

10:48:57 12 Q. Okay. What makes you say that?

10:49:00 13 A. It was clear they were talking about high volume. High
10:49:05 14 volume doesn't mean high volume altering of a procedure to
10:49:09 15 address fetal tissue remains. High volume means how can you get
10:49:16 16 thymus -- liver thymus, whatever he was talking about, from the
10:49:23 17 products of conception, which is the phrase used at the
10:49:27 18 beginning.

10:49:29 19 And the question that Ms. Farrell was asked was not
10:49:35 20 about, can you alter your clinical procedures in an
10:49:43 21 already-aborted fetal tissue remains in order to access liver
10:49:46 22 thymus. No. That is not my -- if I'm wrong, I'll get corrected,
10:49:51 23 but my judgment, that it is reasonable to conclude, especially in
10:49:56 24 the context of all of these conversations that addresses this --
10:50:01 25 this is not the only piece -- that this discussion and when the

10:50:08 1 word "procedure" was used in that colloquy, the last 25 seconds,
10:50:14 2 they were not talking about the procedures of addressing
10:50:18 3 already-aborted fetal tissue remains. They were addressing
10:50:22 4 abortion procedures.

10:50:23 5 Q. And you're really not qualified by your education and
10:50:25 6 experience to make that determination, are you?

10:50:27 7 A. I didn't make it --

10:50:28 8 MR. STEPHENS: Objection, your Honor. He asked him the
10:50:30 9 question.

10:50:30 10 MR. WATKINS: That's right. And I've asked him the
10:50:33 11 question, I got his answer, and now I want to know if he's
10:50:35 12 qualified.

10:50:37 13 MR. STEPHENS: He's trying to disqualify him from
10:50:40 14 answering the question that he asked.

10:50:40 15 THE COURT: I don't think that's what he's trying to
10:50:42 16 do. But let's ask the next question.

10:50:44 17 Q. (BY MR. WATKINS) And who did you rely on to tell you that
10:50:46 18 that was what that last 25 seconds meant?

10:50:51 19 A. We have a -- someone that is qualified, Dr. Ted Spears, who
10:50:57 20 is the Chief Medical Officer at the Inspector General whose job
10:51:01 21 it is to render exactly this kind of advice.

10:51:03 22 Q. And what qualifications does Mr. Ted Spears have to give you
10:51:07 23 that advice?

10:51:09 24 A. Well, he -- that is his mission. I mean, he is a doctor,
10:51:17 25 more than 30 years of practice in the state of Texas, and he will

10:51:21 1 be testifying today on exactly this topic.

10:51:24 2 Q. He's an orthopedic surgeon.

10:51:27 3 A. That's right.

10:51:27 4 Q. He's a sports doctor.

10:51:32 5 A. He understands --

10:51:33 6 Q. He is a sports doctor.

10:51:36 7 A. Is that a question?

10:51:36 8 Q. Yes. Is he a sports doctor?

10:51:38 9 A. Yes.

10:51:39 10 Q. Okay. Has he ever performed an abortion?

10:51:43 11 A. No. I don't believe so.

10:51:44 12 Q. Has he ever been trained as a gynecologist or obstetrician?

10:51:47 13 A. I don't know.

10:51:48 14 Q. Okay. So you relied on him telling you that that's what
10:51:51 15 that 25 seconds meant, and you have no idea if he knows anything
10:51:55 16 about what you asked him about.

10:51:58 17 A. I've answered why he has the responsibility to advise me.

10:52:04 18 Q. Well, we'll talk to him later when he gets the stand.

10:52:13 19 Now, you said you had opened some audits and then, the
10:52:16 20 video came along, and then, you never went back to the audits,
10:52:19 21 did you?

10:52:20 22 A. No. I didn't -- that's not what I said.

10:52:22 23 Q. Oh, I'm sorry.

10:52:24 24 A. What I said was, we were reviewing audit findings and
10:52:29 25 considering the reopening of audits pursuant to that review.

10:52:34 1 Q. Okay. But then, the videos came out and you never went back

10:52:37 2 to that. You didn't reopen it.

10:52:40 3 A. We have not yet reopened it.

10:52:42 4 Q. All right. So there's nothing about those audits that's

10:52:44 5 involved in your decision to --

10:52:47 6 A. That's right.

10:52:48 7 Q. Okay. Let me show you what is Defendants' 23. Do you

10:53:19 8 recognize Defendants' 23?

10:53:24 9 A. May I have a minute to read it?

10:53:26 10 Q. Yes.

10:53:47 11 MR. WATKINS: Judge, I have hardcopies for the Court,

10:53:49 12 if you'd like.

10:53:51 13 THE COURT: Is it admitted?

10:53:55 14 MS. WERNER: Yes.

10:53:57 15 MR. WATKINS: Yes. It's pre-admitted.

10:54:08 16 A. Yes. It is an approval letter on an application for

10:54:12 17 enrollment.

10:54:13 18 Q. (BY MR. WATKINS) All right. And it's a state record.

10:54:17 19 A. Yes.

10:54:17 20 Q. From the OIG's Office, I'm sorry. That's not right. That's

10:54:22 21 wrong. But it's about Planned Parenthood, right? Gulf Coast?

10:54:26 22 A. Yes.

10:54:27 23 Q. And the date's October 17, 2016?

10:54:29 24 A. Yes.

10:54:30 25 Q. All right. Now, let's read the part that's on the second

10:54:33 1 paragraph.

10:54:35 2 HHSC has approved your application to become a Texas
10:54:38 3 state healthcare programs provider for a term ending October 13,
10:54:44 4 2021, right?

10:54:46 5 A. That's right.

10:54:47 6 Q. You'd already seen the video by then, right?

10:54:52 7 A. I had not.

10:54:55 8 Q. But your staff had told you about it.

10:54:58 9 A. Yes. That's right.

10:54:59 10 Q. Now, this decision in that sentence says, to approve your
10:55:04 11 application is based on a recommendation from the HHSC Office of
10:55:09 12 Inspector General. That's you.

10:55:12 13 A. Yes.

10:55:13 14 Q. Okay. So after you knew about the videos, after you'd been
10:55:18 15 told about the videos, you then approved them as a provider.

10:55:23 16 A. Yes.

10:55:24 17 Q. So whatever you had seen prior to October 17, 2016 had not
10:55:31 18 animated you to kick them out yet.

10:55:33 19 A. That's right, pursuant to our previous discussion of what
10:55:37 20 the October 19th letter is, a beginning of a process, not a fait
10:55:50 21 accompli.

10:55:50 22 Q. Let me hand you what is Defendants' No. 35. Do you
10:56:06 23 recognize that?

10:56:08 24 A. I do.

10:56:09 25 Q. And that's Greater Texas, right?

10:56:11 1 A. Yes.

10:56:11 2 Q. September 26, '16?

10:56:14 3 A. Yes.

10:56:18 4 Q. And you approved Greater Texas as a provider.

10:56:23 5 A. That's right. I did not approve them, but HHSC did.

10:56:28 6 Q. Oh, well, remember the second sentence, to approve your
10:56:32 7 application is based on a recommendation. So I misspoke. You
10:56:35 8 didn't approve it, you just recommended it?

10:56:38 9 A. May I explain?

10:56:39 10 Q. Well, you recommended based, in part, on a recommendation
10:56:43 11 from the OIG, right?

10:56:46 12 A. Yes.

10:56:47 13 Q. That's what the document says.

10:56:49 14 A. May I explain recommendation?

10:56:52 15 Q. Okay. What's recommendation?

10:56:54 16 A. Thank you.

10:56:56 17 We have a role in the process of enrollment of all
10:57:01 18 providers and that is to do background checks. And so, we
10:57:06 19 fulfilled that process, ministerial role in the approval process
10:57:12 20 that is managed by HHSC.

10:57:14 21 Q. Okay. Now, I can go through several more, but it's fair to
10:57:18 22 say that a large number of the people that you're trying to
10:57:22 23 terminate, the entities that you're trying to terminate, you
10:57:25 24 approved them as providers after OIG had the videotapes.

10:57:32 25 A. For good reason.

10:57:33 1 Q. I didn't ask you for good reason. My question is, you

10:57:36 2 approved --

10:57:36 3 A. Yes.

10:57:37 4 Q. -- of them, right?

10:57:38 5 A. Yes.

10:57:41 6 Q. Let's look at Plaintiffs' 17. Do you recognize that?

10:58:32 7 A. I do.

10:58:33 8 Q. And that is from the U.S. Code, 42 U.S.C. 1396(a), correct?

10:58:44 9 A. It is.

10:58:45 10 Q. Okay. And it says under the front page, a state plan for

10:58:51 11 medical assistance must, that's a mandatory word, right?

10:58:55 12 A. Yes.

10:58:55 13 Q. Okay. And then, let's turn over to Section 23. Do you

10:59:09 14 recognize Section 23 on the second page?

10:59:11 15 A. May I have a minute to read it?

10:59:13 16 Q. Certainly.

11:00:06 17 A. Yes.

11:00:07 18 Q. All right. And what is that?

11:00:09 19 A. It's the freedom of choice provision required under the

11:00:13 20 state plan.

11:00:14 21 Q. And that means that the state of Texas is not supposed to

11:00:17 22 deny to a Medicaid-eligible recipient the right for that person

11:00:22 23 to choose the provider they want.

11:00:24 24 A. That's right.

11:00:25 25 Q. And you do know, then, that raising obstacles for those

11:00:30 1 folks to be able to get to the provider of their choice would not
11:00:34 2 be nice.

11:00:37 3 MR. STEPHENS: Objection, your Honor. It's vague.

11:00:41 4 THE COURT: Vague?

11:00:43 5 MR. STEPHENS: It's argumentative. Would not be nice.

11:00:49 6 A. Right.

11:00:50 7 Q. (BY MR. WATKINS) What?

11:00:51 8 A. Yes.

11:00:53 9 Q. So you didn't do any audit, you didn't reopen the audit.

11:01:04 10 The misrepresentation, that thing to the Texas Ranger, the
11:01:11 11 interpretations of these video clips was made by you, a lawyer,
11:01:15 12 based on the advice of an orthoped. Do you think that justifies
11:01:21 13 denying these women the right to choose their own provider?

11:01:33 14 MR. STEPHENS: Objection, your Honor. It's
11:01:35 15 argumentative.

11:01:38 16 A. I don't agree --

11:01:38 17 THE COURT: He can make the decision. It's not
11:01:41 18 argument --

11:01:42 19 A. I don't agree with the premises of your question. The
11:01:45 20 reason for the disenrollment of Planned Parenthood Gulf Coast in
11:01:59 21 this case is clearly and convincingly supported by the evidence
11:02:03 22 that came before me. I judiciously and justly reviewed it. I
11:02:11 23 was not dilatory, I was diligent. That the time span reflected
11:02:20 24 that. And the reason for the disenrollment is contained in that
11:02:25 25 video. And that video, as I believe the Court will find, upon

11:02:31 1 reviewing the many instances of evidence within it, demonstrably
11:02:40 2 shows a willingness to violate the medical and ethical standards
11:02:45 3 in Texas, standards buttressed by federal law.

11:02:52 4 THE COURT: Want to read the question back to the
11:02:54 5 witness.

11:03:15 6 (Last question read back.)

11:03:19 7 A. And that -- no. But those aren't the right premises.

11:03:25 8 Q. (BY MR. WATKINS) All right.

11:03:26 9 A. Sorry.

11:03:27 10 Q. I guess we'll talk about the other.

11:03:29 11 By the way, you indicate what you saw indicated a
11:03:31 12 willingness to violate, right? It's what you just said.

11:03:37 13 A. I don't believe I used the word "willingness" just now.

11:04:31 14 Q. You did use the word "willingness."

11:04:33 15 A. May I answer?

11:04:35 16 Q. My question is, did you use the word "willingness"?

11:04:37 17 A. Yes. And by willingness, may I explain what I meant?

11:04:40 18 Q. No. I just want to know if you used it. Is there a
11:04:43 19 difference between willingness and actually doing something?

11:04:45 20 A. If I did use the word -- yes. I take that I used the word
11:04:51 21 "willingness," based on what you just said. And willingness
11:04:55 22 means, as evidenced in the video, the condoning of a practice
11:05:04 23 that is a program violation. That's what willingness means.

11:05:08 24 Q. Well, let's go back to your notice of termination.

11:05:15 25 Defendants' Exhibit 1 and Plaintiffs' Exhibit 1. You have one up

11:05:20 1 there, don't you?

11:05:20 2 A. I do.

11:05:28 3 Q. Let's go to page 3 -- I'm sorry, page 2.

11:05:34 4 A. Yes.

11:05:36 5 Q. The unedited video footage, do you see that paragraph?

11:05:40 6 A. Yes.

11:05:47 7 Q. The last sentence starts, HHSC-IG chief medical officer. Do

11:05:57 8 you see that?

11:05:58 9 A. You're on page 2 of 6?

11:06:00 10 Q. Yes.

11:06:02 11 A. The last sentence of which?

11:06:03 12 Q. The paragraph that starts, the unedited video.

11:06:06 13 A. Yes.

11:06:06 14 Q. The last sentence starts, HHSC.

11:06:08 15 A. Yes.

11:06:10 16 Q. Chief medical officer. That's Mr. Spears -- Dr. Spears that

11:06:14 17 we talked about before, right?

11:06:15 18 A. That's right.

11:06:15 19 Q. Okay. Reviewed the video and concluded that your

11:06:19 20 willingness to engage in these practices. Which practices are

11:06:25 21 you talking about?

11:06:28 22 A. The practice evidenced in 3 in the next paragraph.

11:06:32 23 Q. Okay. And so, their willingness to engage in those

11:06:37 24 practices is your basis -- is one of the bases for kicking them

11:06:41 25 out?

11:06:41 1 A. Yes. And willingness means condoning a practice that is a
11:06:50 2 program violation.
11:06:53 3 Q. A willingness to condone?
11:06:55 4 A. No. Willingness -- I'm defining willingness. And it may
11:06:59 5 have been inartfully chosen in this -- in my writing here.
11:07:03 6 THE COURT: You're now amending your letter?
11:07:05 7 THE WITNESS: I'm not amending it. I'm explaining --
11:07:07 8 THE COURT: Okay. Then answer the question. I'm
11:07:08 9 perfectly able of determining what willingness --
11:07:12 10 THE WITNESS: Yes.
11:07:12 11 THE COURT: What willingness means.
11:07:14 12 THE WITNESS: Yes, sir.
11:07:17 13 Q. (BY MR. WATKINS) All right. Now, let's look at the next
11:07:24 14 paragraph, which you just referenced. No. 1, a history. How
11:07:29 15 many times do you know about?
11:07:32 16 A. The video indicates that this particular condoning or
11:07:40 17 acceptance or practice of this practice has occurred before.
11:07:46 18 Q. Well, if we're slicing and dicing the words, it says, a
11:07:51 19 history of deviating from accepted standards to procure samples.
11:07:57 20 A. Yes.
11:07:58 21 Q. You say that means procured from the pregnant woman, right?
11:08:05 22 That's what you're saying.
11:08:09 23 A. I'm saying that the video evidence indicates that this has
11:08:16 24 been a practice.
11:08:17 25 Q. No, sir. I'm asking you at this point about the words.

11:08:21 1 A. Yes.

11:08:22 2 Q. Because you want to redefine some words. I'm asking you
11:08:25 3 what you meant by procure samples. Because, see, my question to
11:08:29 4 you specifically is, if you've got three trays there of already
11:08:34 5 extracted material and you've got a researcher that wants one of
11:08:38 6 them, you could provide that one to the researcher.

11:08:41 7 MR. STEPHENS: Objection, your Honor. He's posing a
11:08:43 8 hypothetical. It's not shown in the video. It's not something
11:08:46 9 that's any part of the letter.

11:08:47 10 THE COURT: Objection is overruled.

11:08:51 11 Q. (BY MR. WATKINS) Couldn't you? Couldn't procure there mean
11:08:54 12 that we've got four of these trays with stuff in it, one of them
11:08:56 13 happens to fit the research project and you pick it out, and that
11:09:00 14 would be procuring a sample, wouldn't it?

11:09:04 15 A. But that is not what I intended or meant in using the word
11:09:09 16 "procure" there.

11:09:10 17 Q. You meant way to procure it out of the woman's body.

11:09:17 18 A. Yes.

11:09:18 19 Q. Okay. But you didn't say that.

11:09:21 20 All right. Let's go No. 2. A history of permitting
11:09:25 21 staff physicians to alter procedures to obtain targeted tissue
11:09:30 22 samples needed for their specific research.

11:09:32 23 Did you hear the testimony that the doctor performing
11:09:35 24 the abortion doesn't know whether it's going to be a research
11:09:38 25 project or not?

11:09:41 1 A. Yes.

11:09:42 2 Q. Do you have any evidence other than a doctor who might be
11:09:46 3 doing research themselves, do you have any evidence that any
11:09:49 4 abortion provider ever knew that a particular abortion product
11:09:55 5 was going to be used for research at the time they were
11:09:57 6 performing the abortion?

11:09:58 7 A. Yes.

11:09:59 8 Q. What evidence is that?

11:10:00 9 A. It's in the video, Dr. Reagan Theiler.

11:10:02 10 Q. Okay. And you say that the evidence -- is Dr. Theiler the
11:10:07 11 one that was doing her own research?

11:10:11 12 A. She was doing her own research. That's right.

11:10:13 13 Q. All right. Now, my question to you was, other than a doctor
11:10:16 14 that was doing their own research, do you know of any instance in
11:10:21 15 which a doctor -- any instance where a doctor performing an
11:10:26 16 abortion knew that it was going to be used -- that the product
11:10:28 17 was going to be used for research?

11:10:35 18 A. I don't -- no. I'm not aware of that.

11:10:37 19 Q. All right. Now, with Dr. Theiler, do you have any evidence
11:10:40 20 that she altered the abortion procedure because she was doing
11:10:44 21 research?

11:10:44 22 A. I don't know.

11:10:45 23 Q. Well, you don't have any evidence of any abortion doctor
11:10:48 24 that ever altered the abortion procedure in order to benefit
11:10:52 25 research, sir.

11:11:21 1 A. All right. I'm sorry. That was a statement. Is that a
11:11:24 2 question?

11:11:24 3 Q. Yeah. It's a question.

11:11:25 4 A. Okay. It is a question that is right.

11:11:31 5 Q. Thank you.

11:11:33 6 Now, look at No. 3. A willingness to convert normal
11:11:39 7 pregnancy to the breach position to ensure researchers to receive
11:11:43 8 intact specimen.

11:11:45 9 A. Yes.

11:11:47 10 Q. Which doctor converted normal pregnancy to the breach
11:11:51 11 position to ensure researchers to receive intact specimens?

11:11:58 12 A. The evidence in the video does not specify a doctor.

11:12:01 13 Q. So you have no evidence for this court of any doctor who
11:12:05 14 ever did that.

11:12:05 15 A. That's right.

11:12:07 16 Q. No. 4, an admission that we get what we need to do to alter
11:12:12 17 the standard of care where we are still maintaining patient
11:12:16 18 safety, still maintaining efficiency and clinic operations, but
11:12:19 19 we integrate research into it.

11:12:20 20 Do you know whether that particular quote -- the lady
11:12:24 21 explained it from the stand the other day -- whether that
11:12:26 22 particular quote applied to altering abortion procedures or
11:12:30 23 altering clinical procedures?

11:12:33 24 A. It applied in my judgment in viewing the video evidence that
11:12:39 25 -- to altering abortion procedures.

11:12:41 1 Q. All right. And so, you discount her testimony that the
11:12:45 2 doctors didn't know whether or not there was going to be -- I
11:12:50 3 mean, you don't know of any. We've already covered that. So I'm
11:12:52 4 wondering how you know that a doctor altered the abortion
11:12:55 5 procedures to benefit research that they didn't know there was
11:12:58 6 going to be any research.

11:13:04 7 A. This was based on the evidence in the video that Planned
11:13:10 8 Parenthood Gulf Coast condones a policy of altering abortion
11:13:18 9 procedures to obtain fetal tissue. I think that's clearly
11:13:21 10 presented in the video.

11:13:22 11 Q. All right. So you're relying solely on the video, and you
11:13:25 12 can't give me the name of a doctor who ever did it.

11:13:28 13 A. I'm relying on the director of research for Planned
11:13:31 14 Parenthood Gulf Coast.

11:13:31 15 Q. All right. So we're going to get all of this from Mr. Ted
11:13:36 16 Spears, right?

11:13:39 17 MR. STEPHENS: Objection, your Honor. He said the
11:13:41 18 director of research for Planned Parenthood Gulf Coast.

11:13:43 19 MR. WATKINS: Ah, excuse me. I misunderstood. I
11:13:46 20 didn't listen to the answer and I know better than that.

11:13:49 21 THE COURT: Well, let's listen.

11:13:51 22 Q. (BY MR. WATKINS) Now, let's see what we have to do about No.
11:13:55 23 5. That admission that Planned Parenthood gets requests for
11:14:02 24 information from our study sponsor on what the data they need
11:14:06 25 that is not our standard of care, that you provided -- is needed

11:14:16 1 creating a separate research protocol or a template that can
11:14:19 2 include medically unnecessary testing.

11:14:23 3 Anything wrong with doing medically unnecessary testing
11:14:26 4 on the extraction, the product of conception that's already been
11:14:31 5 extracted? You can do that, right?

11:14:33 6 A. There -- I'm sorry, is your question, is there anything
11:14:36 7 wrong with unnecessary testing?

11:14:37 8 Q. Yes. Is there anything wrong with doing unnecessary
11:14:42 9 testing, quote, unquote, whatever that means, on extraction that
11:14:47 10 has already been extracted? Can't you test a fetal tissue for
11:14:52 11 whatever you want to test it for?

11:14:57 12 A. I think there's something wrong with doing unnecessary
11:15:00 13 testing, but you can test fetal tissue. Yes.

11:15:02 14 Q. Well, do you suppose that researchers that are working on
11:15:06 15 fetal tissue ever have a theory and then, they test it and it
11:15:08 16 doesn't work out, that's unnecessary testing, then, isn't it?

11:15:11 17 A. Okay. Just different interpretation of the word
11:15:13 18 "unnecessary."

11:15:13 19 Q. Okay. Well, let's pin that down. There's nothing wrong
11:15:19 20 with doing whatever testing you're going to test on the fetal
11:15:23 21 tissue after it's been extracted.

11:15:25 22 A. Deemed necessary, yes.

11:15:28 23 Q. Deemed necessary by the researcher for their research
11:15:31 24 project.

11:15:31 25 A. Right.

11:15:32 1 Q. Do you have any evidence that anybody ever did any testing
11:15:36 2 on already extracted fetal tissue that was not necessary for the
11:15:40 3 research they were doing?

11:15:44 4 A. It's -- that part of the finding is tied to the first part.

11:15:50 5 Q. I'm sorry. I just thought it was listed there separate.
11:15:56 6 My question -- can I get an answer to the question?

11:16:00 7 A. To that particular question, no.

11:16:02 8 Q. Okay. You don't know then?
11:16:04 9 THE COURT: Wait. He asked another question, then you
11:16:08 10 said no. That means you refused to answer.

11:16:11 11 THE WITNESS: Oh, I'm sorry.

11:16:13 12 A. Yes, you can.

11:16:14 13 Q. (BY MR. WATKINS) Yes, you can what?

11:16:15 14 A. Yes, you can get an answer. And would you mind rephrasing
11:16:18 15 it, please? I apologize.

11:16:24 16 Q. Is there anything wrong about doing any testing that you
11:16:26 17 want to do to the already extracted fetal tissue?

11:16:34 18 A. As a general matter, I think not.

11:16:36 19 Q. All right. Now, No. 6 here is a willingness to charge more
11:16:45 20 than the cost incurred for procuring fetal tissue. What do you
11:16:52 21 base that on?

11:16:54 22 A. Past contracting activity that was -- well, I said two
11:17:03 23 things. I'm sorry. I'm happy to begin again.

11:17:08 24 The video evidence indicates -- excuse me, that in this
11:17:17 25 negotiation, in the colloquies that there's repeated discussion

11:17:24 1 about ensuring there's financial benefit.

11:17:26 2 Q. Okay.

11:17:27 3 A. And financial benefit as those various parts of the dialogue
11:17:38 4 reveal was something extended beyond just covering costs.

11:17:44 5 Q. What? I mean, they said they were going to get a financial
11:17:49 6 benefit. What did they say that would be more than the cost?

11:17:53 7 A. It was specifically identified in the language between the
11:18:03 8 parties in the video discussing that financial benefit.

11:18:06 9 Q. In what way?

11:18:09 10 A. They didn't -- I think the word "profit" was used.

11:18:12 11 Q. Okay. So you think there's something in that videotape that
11:18:15 12 says, we need to make a profit?

11:18:17 13 A. I'm sorry. Actually, I think the word "profit" was used.
11:18:21 14 That's right.

11:18:21 15 Q. In what context?

11:18:22 16 A. Regarding financial benefit.

11:18:23 17 Q. All right. So you think that if somebody views the
11:18:26 18 videotape, they're going to find somebody from a Planned
11:18:29 19 Parenthood entity that says, when we do this for research, we
11:18:31 20 have to make a profit?

11:18:35 21 A. No. I don't -- it's hypothetical. I'm speaking to what I
11:18:39 22 viewed in the video.

11:18:41 23 Q. No, sir. I'm not asking a hypothetical. I'm asking you,
11:18:43 24 are you telling this judge that if we review that videotape,
11:18:47 25 you're going to find a Planned Parenthood employee who's going to

11:18:50 1 say, we need to make a profit on research fetal tissue?

11:18:55 2 A. That statement is not in there. No.

11:18:56 3 Q. All right. Now, it does say financial benefit.

11:19:00 4 A. It does.

11:19:01 5 Q. Yeah. And it's a financial benefit to get some of your

11:19:04 6 expenses reimbursed, isn't it?

11:19:07 7 A. Yes. That's one interpretation.

11:19:11 8 Q. Well, it's not an interpretation. It is a --

11:19:13 9 A. Application.

11:19:14 10 Q. It is a financial benefit to get reimbursed for your actual

11:19:19 11 reasonable expenses.

11:19:20 12 A. Yes.

11:19:21 13 Q. Thank you.

11:19:26 14 Now, later down on that page, you list -- and do you

11:19:37 15 understand what I mean when you say, this is the affiliate

11:19:39 16 problem?

11:19:40 17 A. Yes.

11:19:41 18 Q. That you're trying to tag one person for somebody else's

11:19:43 19 stuff, right?

11:19:45 20 A. Yes.

11:19:46 21 Q. Okay. You list nine things, right?

11:19:58 22 A. Yes. That's correct.

11:19:59 23 Q. All right. Nos. 3 through 8 have to do with the Federation,

11:20:07 24 right?

11:20:07 25 A. Yes.

11:20:07 1 Q. Okay. Do you have any evidence that the Federation has done
11:20:13 2 anything wrong?

11:20:14 3 A. No.

11:20:15 4 Q. Okay. So you're not trying to remove the Federation from
11:20:19 5 any Medicaid program in Texas, are you?

11:20:22 6 A. I don't think that's at issue.

11:20:24 7 Q. I didn't ask you if that was at issue.

11:20:26 8 A. I'm sorry. Yeah.

11:20:27 9 Q. You're not trying to remove Federation from any Medicaid
11:20:29 10 program in Texas.

11:20:31 11 A. That's right.

11:20:32 12 Q. And you don't have any allegation in here that Federation
11:20:35 13 ever did anything wrong.

11:20:37 14 A. That's right.

11:20:37 15 Q. Okay. So you cannot kick out those three entities based on
11:20:42 16 anything the Federation did.

11:20:44 17 MR. STEPHENS: Objection, your Honor. Relevance.

11:20:50 18 Planned Parenthood Federation is not discussed in the letter.

11:20:55 19 And plaintiffs' counsel arguing issues not discussed in the

11:21:00 20 letter aren't relevant. Objection to our discussions with Mr.

11:21:03 21 Bowen --

11:21:04 22 THE COURT: This is cross-examination and I'll permit
11:21:06 23 the answer.

11:21:08 24 A. Can you rephrase, please?

11:21:10 25 Q. (BY MR. WATKINS) All right. I used to be able to remember

11:21:14 1 these things.

11:21:21 2 THE COURT: Repeat the question, please.

11:21:21 3 (Last question read back.)

11:21:24 4 A. I believe that's right.

11:21:25 5 Q. (BY MR. WATKINS) Okay. And so, whether or not the
11:21:29 6 affiliates in Texas are affiliated with Federation is simply
11:21:33 7 irrelevant to what you're trying to do.

11:21:35 8 A. No. I don't agree with that.

11:21:37 9 Q. Well, you're not trying to kick the Federation out.

11:21:41 10 A. That's right.

11:21:42 11 Q. All right. And there's nothing that the Federation did that
11:21:48 12 you could hold the three entities in Texas responsible for.

11:21:53 13 A. That's right.

11:21:54 14 Q. Okay. So whether or not they're affiliated with the
11:21:57 15 Federation just doesn't have anything to do with your right to
11:22:00 16 exclude the three that -- the three entities we've been talking
11:22:03 17 about.

11:22:07 18 A. I don't agree with that.

11:22:09 19 Q. Okay. What is it that the Federation does that you think
11:22:12 20 justifies your right to exclude those three entities from
11:22:16 21 Medicaid?

11:22:17 22 A. It provides all the guidance regarding fetal tissue
11:22:24 23 research. It tracks every fetal tissue research activity in the
11:22:29 24 state. It provides the training. It provides -- it certifies,
11:22:35 25 you know, it provides man -- there is manifold evidence --

11:22:45 1 manifest evidence of commonality among the affiliates to
11:22:55 2 demonstrate -- to substantiate their affiliation and not their
11:22:59 3 separateness. That this cuts to whether they are an affiliate
11:23:04 4 under Texas law.

11:23:07 5 Q. Well, my question -- I didn't make my question clear.

11:23:10 6 What difference does it make if these are affiliates of
11:23:12 7 Federation if they're not saying the Federation did anything
11:23:15 8 wrong?

11:23:19 9 A. Because the issue is whether they are affiliates. And our
11:23:24 10 rules provide that if you are affiliated with an entity --
11:23:30 11 another entity in the state that exhibits a program violation,
11:23:34 12 then you may be subject to sanction.

11:23:37 13 Q. Right. So what is the program violation that Federation
11:23:41 14 committed that lets you do this to these entities?

11:23:45 15 A. There isn't one.

11:23:46 16 Q. Okay. Now, so it doesn't matter whether they're affiliated
11:23:50 17 with the Federation.

11:23:59 18 A. It does, but not for the reasons that the Federation did
11:24:04 19 anything wrong.

11:24:06 20 Q. Well, what would be wrong with being affiliated with an
11:24:09 21 organization that didn't do anything wrong?

11:24:11 22 A. There's nothing wrong with that. The issue is whether these
11:24:15 23 entities are intrinsically and extensively affiliated in their
11:24:21 24 practice and engagement in their procedures and operation, and
11:24:28 25 the answer is yes, they are. The finding is not that Planned

11:24:34 1 Parenthood Federation of America did something wrong. The
11:24:36 2 finding is that Planned Parenthood Gulf Coast did.

11:24:39 3 Q. All right.

11:24:40 4 A. And by virtue of that complex nexus within the state of
11:24:49 5 Texas, among these affiliates evidenced by the commonality of
11:24:54 6 practice, which is generated, managed, overseen and executed even
11:25:00 7 by the Federation undergirds the conclusion that the affiliate
11:25:07 8 provision in our rule is applicable here.

11:25:11 9 Q. That you can hold one entity responsible for the misconduct
11:25:14 10 of another entity. That's your rule, isn't it?

11:25:17 11 A. That's it.

11:25:17 12 Q. All right. So if you're affiliated with the Federation and
11:25:20 13 they didn't do anything wrong, then you can't hold those three
11:25:23 14 entities responsible because they're affiliated with the
11:25:28 15 Federation.

11:25:29 16 A. And I disagree.

11:25:34 17 Q. Okay. Well, we'll just let you disagree.

11:25:37 18 Now, you've got three others here. In other words,
11:25:40 19 there's nine of them, and six of them have to do with whether or
11:25:43 20 not they're affiliated with the Federation.

11:25:46 21 A. Yes.

11:25:46 22 Q. All right. Now, common identifying information among
11:25:51 23 affiliates. What's that? Number 1.

11:26:01 24 A. The common insignia, the trademark.

11:26:05 25 Q. Isn't it true that the state of Texas had always approved

11:26:09 1 the separation of the abortion part of Planned Parenthood from
11:26:12 2 the clinical part?

11:26:16 3 A. Yes. That's required.

11:26:18 4 Q. Okay. Well, and you approved it. You issued these IDs to
11:26:22 5 people based on the fact that these people were not performing
11:26:26 6 abortions. You ratified the separation attempts that Planned
11:26:32 7 Parenthood did, right?

11:26:34 8 A. That's right.

11:26:35 9 Q. Okay. Individual providers working across affiliates. All
11:26:43 10 right. We're talking about in this letter Gulf Coast, Greater
11:26:47 11 Texas and San Antonio, including the surgical center.

11:26:51 12 Name for me -- I've got to get the words right --
11:27:01 13 individual providers working across affiliates. So name for me
11:27:04 14 every individual provider that worked back and forth between
11:27:09 15 these three entities.

11:27:10 16 MR. STEPHENS: Asked and answered, your Honor. He's
11:27:12 17 already asked him.

11:27:17 18 Q. (BY MR. WATKINS) What I'm asking you about this particular
11:27:19 19 finding, I'm kind of interested in what did you rely upon to make
11:27:24 20 this finding --

11:27:24 21 THE COURT: You can answer.

11:27:26 22 A. As I said earlier, Dr. -- I'm sorry, I'm forgetting her name
11:27:31 23 now.

11:27:31 24 Q. (BY MR. WATKINS) Just don't say it. We know who you're
11:27:33 25 talking about.

11:27:33 1 A. Okay.

11:27:34 2 Q. And you don't know whether that worked simultaneously at any
11:27:38 3 of these.

11:27:43 4 A. I believe there is -- there are indications in the video
11:27:47 5 that occurred, but I don't know.

11:27:48 6 Q. All right. Anybody else? I mean, here's a big ol' finding
11:27:53 7 by the state of Texas that says that you're going to get these
11:27:58 8 folks moving back and forth. And if that's the deal, I want to
11:28:01 9 know anybody else. Are we talking about one doctor?

11:28:06 10 A. I don't have any other names for you right now. I believe
11:28:12 11 there was testimony yesterday about a doctor that worked at one
11:28:16 12 entity and then another. But the answer to your question is, I
11:28:21 13 don't have any other names for you right now.

11:28:22 14 Q. All right. Now, we all know that in Travis County, there's
11:28:25 15 a bunch of hospitals.

11:28:26 16 A. Yes.

11:28:26 17 Q. We know doctors that do stuff in one hospital and then, go
11:28:29 18 do it at another hospital.

11:28:31 19 A. That's right.

11:28:32 20 Q. Does that make those hospitals affiliates?

11:28:34 21 A. Does it, no.

11:28:36 22 Q. All right. Let's also talk about willingness, again, for a
11:28:39 23 minute. Let's assume, for a moment -- this is a hypothetical --
11:28:42 24 that there's a backboard of directors of three directors, all
11:28:45 25 right? And one of those directors says, we're short of money,

11:28:49 1 let's go rob a 7-Eleven and get the money for the bank, and the
11:28:53 2 other two say no, we can't do that. Has that shown that that
11:28:57 3 bank is willing to rob the 7-Eleven?

11:28:59 4 A. No.

11:29:00 5 Q. All right. So you have individuals here who you say have
11:29:04 6 done bad things that are willing to do bad things.

11:29:06 7 Do you have any indication that the board of directors
11:29:08 8 of any of these entities ever approved their willingness to do
11:29:11 9 those things?

11:29:13 10 A. I don't.

11:29:13 11 Q. All right. If you'll give me a minute, Judge, I think I'm
11:29:46 12 about through. Maybe not. Pass the witness.

11:30:19 13 THE COURT: Any redirect?

11:30:22 14 MR. STEPHENS: No, your Honor.

11:30:33 15 THE COURT: I have listened to recent testimony about
11:30:41 16 the Department of Health regulations, one of which requires
11:30:49 17 separation of the placenta from fetal tissue and requires
11:30:59 18 separating in the fetal tissue other -- I didn't like the word
11:31:08 19 "ornaments" but other materials that are not exactly fetal
11:31:16 20 tissue. It makes -- does that make sense to you?

11:31:19 21 THE WITNESS: Yes, sir.

11:31:19 22 THE COURT: That has to be done post-removed.

11:31:25 23 THE WITNESS: Yes.

11:31:32 24 THE COURT: And it has to be done by the people who are
11:31:39 25 going to store before storing -- before freezing the fetal

11:31:46 1 materials.

11:31:47 2 THE WITNESS: Uh-huh. Yes, sir.

11:31:48 3 THE COURT: I also heard testimony that the regulation
11:32:03 4 in its definition of fetal tissue is that it is not human tissue.
11:32:12 5 I heard it three times and confirmed by the defendants' lawyers.
11:32:28 6 That is your department, isn't it?

11:32:30 7 THE WITNESS: Yes, sir.

11:32:30 8 THE COURT: You work in that department. All right.
11:32:34 9 You may step down.

11:32:46 10 You may call your next witness.

11:32:48 11 MR. BIGGS: At this time, defendants call Dr. Ted
11:32:51 12 Spears, your Honor.

11:33:20 13 THE COURT: Come forward, sir, and be sworn.

11:33:22 14 (Witness sworn.)

11:33:37 15 THE COURT: Good morning. Would you tell us your full
11:33:42 16 name and spell your last, please, for the record?

11:33:44 17 THE WITNESS: Yes. My name is Ted Spears, S-P-E-A-R-S.

11:33:49 18 THE COURT: You may proceed.

11:33:50 19 TED SPEARS, called by the Defendant, duly sworn.

11:33:50 20 DIRECT EXAMINATION

11:33:50 21 BY MR. BIGGS:

11:33:51 22 Q. Thank you, your Honor.

11:33:52 23 Good morning, Dr. Spears. How are you currently
11:33:56 24 employed?

11:33:56 25 A. I'm the Chief Medical Officer for the Inspector General of

11:34:01 1 the Health and Human Services of Texas.

11:34:02 2 Q. What does the Inspector General's Office do exactly?

11:34:03 3 A. The role and responsibility of the Inspector General is the
11:34:07 4 integrity, oversight of all of the public funds that are spent in
11:34:13 5 the state of Texas annually.

11:34:15 6 Q. Does your office have any responsibilities regarding
11:34:17 7 Medicaid?

11:34:18 8 A. Yes, it does.

11:34:19 9 Q. Will you briefly describe how Medicaid is administered in
11:34:23 10 Texas?

11:34:23 11 A. The policy development and review is provided by Health and
11:34:28 12 Human Services. The Inspector General's role is, again, the
11:34:32 13 integrity, oversight of the programs under Health and Human
11:34:37 14 Services.

11:34:37 15 Q. As the Chief Medical Officer, what are your
11:34:41 16 responsibilities?

11:34:42 17 A. My primary responsibility is to provide medical advice and
11:34:47 18 medical direction for clinical matter -- clinical medical
11:34:51 19 matters.

11:34:52 20 Q. Let's talk about what qualifies you to be the Chief Medical
11:34:55 21 Officer. Where did you go to college?

11:34:57 22 A. University of Texas undergraduate here.

11:35:00 23 Q. Did you continue your education after graduating from
11:35:02 24 college?

11:35:02 25 A. Yes, I did. I went to University of Texas Medical Branch in

11:35:07 1 Galveston, Texas.

11:35:08 2 Q. Did you have any training following graduating from medical
11:35:12 3 school?

11:35:12 4 A. Yes. Following medical school, I pursued orthopedic
11:35:16 5 surgical training and did five-year orthopedic surgical
11:35:21 6 residency.

11:35:21 7 Q. Did you have any further training after that?

11:35:23 8 A. Yes. I electively pursued postgraduate subspecialty
11:35:28 9 surgical training, called a fellowship training program, and I
11:35:32 10 performed two of those independently: One in Houston at the
11:35:37 11 University of Texas Houston; the other in Dallas with a professor
11:35:40 12 at U.T. Southwestern.

11:35:42 13 Q. Did those fellowships have any specific concentration?

11:35:45 14 A. That's -- fellowships are when a doctor does a residency
11:35:51 15 within a specialty, whenever you do a fellowship, you're
11:35:55 16 subspecializing within that. So, for instance, at the University
11:35:58 17 of Texas, I did a surgical fellowship for complex foot and ankle
11:36:03 18 problems, and then, after that, went to Dallas and performed a
11:36:07 19 complex knee reconstruction in sports medicine fellowship.

11:36:11 20 Q. What did you do after completing your fellowship?

11:36:13 21 A. I finally got a job, came back to Austin August of '86, and
11:36:20 22 have been in private practice until August of 2016.

11:36:25 23 Q. Will you please just briefly describe your practice?

11:36:30 24 A. My practice was a community orthopedic practice. I was in
11:36:38 25 sole practice the entire 30 years and I have my own private

11:36:44 1 practice.

11:36:45 2 Q. Did you perform any surgeries in private practice?

11:36:47 3 A. Yes. Surgery is -- orthopedic surgery is the focus of
11:36:53 4 orthopedics, musculoskeletal. And yes, I did a lot of surgery
11:36:58 5 over 30 years.

11:36:59 6 Q. How many surgeries have you performed over that period?

11:37:01 7 A. I think it would be conservative to estimate that I did 200
11:37:05 8 surgeries a year for 30 years, and not counting the time that I
11:37:09 9 spent in training and residency in the fellowship program where I
11:37:12 10 served as a secondary surgical assist.

11:37:15 11 Q. Are you board-certified?

11:37:16 12 A. Yes, I am.

11:37:17 13 Q. What are you board-certified in specifically?

11:37:20 14 A. I'm board-certified by the American Board of Orthopedic
11:37:23 15 Surgery.

11:37:23 16 Q. How long have you been board-certified?

11:37:25 17 A. Since July of 1992.

11:37:28 18 Q. Do you have any affiliations with entities outside of your
11:37:34 19 private practice?

11:37:35 20 A. Yes. Over the years, I've served in a variety of positions
11:37:38 21 with the Texas Orthopedic Association, which is affiliated with
11:37:42 22 Texas Medical Association. I have been an adjunct professor in
11:37:46 23 the department of kinesiology and exercise physiology for over
11:37:50 24 ten years, and a number of community clinics that I've done pro
11:37:56 25 bono that I enjoyed for the endurance community here in Austin.

11:37:59 1 Q. Through this training and practice experience, have you
11:38:01 2 become familiar with general medical and ethical standards of
11:38:05 3 surgery?

11:38:05 4 A. I feel that I have.

11:38:06 5 Q. How have you become familiar?

11:38:08 6 A. Well, experience is probably the greatest teacher.
11:38:12 7 Certainly we have some superficial exposure in terms of academic
11:38:15 8 or didactic work, but really, it's a developmental thing. It's
11:38:22 9 something that over time, you're presented with challenge after
11:38:26 10 challenge and you learn.

11:38:29 11 Q. Let's turn to the facts of this dispute.

11:38:32 12 Did the Inspector General ever ask you to watch the
11:38:36 13 eight-and-a-half hour Planned Parenthood Gulf Coast video?

11:38:39 14 A. Yes.

11:38:41 15 Q. Did you watch that video?

11:38:42 16 A. Yes, I did.

11:38:44 17 Q. Did you watch the video in its entirety?

11:38:47 18 A. Every bit of it.

11:38:49 19 Q. Did the Inspector General ever ask you for your medical
11:38:52 20 judgment regarding that video?

11:38:54 21 A. Yes. After I viewed the video -- he asked for my judgment.

11:38:59 22 MR. WATKINS: Objection, your Honor. No foundation
11:39:00 23 that he's got any expertise relating to what was in the video.
11:39:04 24 He's an orthopedic surgeon. He's a sports medicine man. No
11:39:07 25 evidence that he's ever performed an abortion or ever seen one.

11:39:12 1 He's not an OB, not a gynecologist, and he's not a pediatrician.

11:39:16 2 He has no relevance to the issues that they are asking him to

11:39:20 3 give the opinion on.

11:39:23 4 MR. BIGGS: Your Honor, we're not tendering Dr. Spears

11:39:26 5 as a expert in OB/GYN or abortion, specifically. We're asking

11:39:30 6 that he be considered for his role he played in IG Bowen's

11:39:34 7 decisionmaking. I believe the points that plaintiffs' counsel's

11:39:38 8 brought up could be explored thoroughly on cross. We're limiting

11:39:41 9 it simply to watching the video and moving forward.

11:39:45 10 THE COURT: Well, you're limiting it except that seems

11:39:48 11 to be the lawsuit, the video. But as I understand it, you're

11:39:56 12 limited to what he told the Inspector General. So I can take it

11:40:02 13 from the record that the Inspector General individually made the

11:40:06 14 decision to terminate them.

11:40:10 15 MR. BIGGS: Correct, your Honor.

11:40:11 16 THE COURT: Then I'll overrule your objection. You can

11:40:15 17 cross-examine on the testimony that what he did and what he told

11:40:22 18 the Inspector General.

11:40:25 19 Q. (BY MR. BIGGS) Did the Inspector General ever ask you for

11:40:27 20 your medical judgment regarding the video, Dr. Spears?

11:40:30 21 A. Yes, he did.

11:40:31 22 Q. Did you provide him with your judgment of that video?

11:40:35 23 A. Yes.

11:40:36 24 Q. What did you provide -- what did you state to the Inspector

11:40:40 25 General about your medical judgment?

11:40:43 1 A. I stated that it is my judgment --

11:40:45 2 MR. WATKINS: Your Honor, that calls for an opinion
11:40:47 3 from an expert, and he's not qualified to give that opinion. I
11:40:50 4 don't care who he told it to, it doesn't come in or help us in
11:40:53 5 any way in this case unless it's a qualified opinion about the
11:40:57 6 information that he's given.

11:40:58 7 THE COURT: Well, it's a two-way street, two-edged
11:41:04 8 knife, if you want to put it accurately. If he's not qualified
11:41:09 9 and he gives a opinion that's relied on, then the opinion of the
11:41:16 10 person who accepts it's judgment may be wrong.

11:41:22 11 MR. WATKINS: I'll withdraw the objection, your Honor.

11:41:24 12 THE COURT: I still overrule it. You may proceed.

11:41:28 13 Q. (BY MR. BIGGS) Thank you, your Honor.

11:41:29 14 What did you tell the Inspector General about the
11:41:32 15 video?

11:41:33 16 A. It was my judgment that it deviated from the ethical norms
11:41:37 17 of medicine and surgical standards.

11:41:42 18 Q. Will you explain what you meant by that?

11:41:47 19 A. I as an orthopedic surgeon certainly do not sit in the
11:41:52 20 position to critique technical competence of a OB/GYN doctor, but
11:41:58 21 as a surgeon, which has been in that environment and with those
11:42:04 22 experiences, I feel that I have more than sufficient judgment to
11:42:11 23 be able to make judgments about surgical occurrences with
11:42:17 24 patients.

11:42:19 25 Q. What specifically on the video raised these concerns that

11:42:23 1 were the subject of your medical judgment?

11:42:26 2 A. The repeated expressions by the director of research as to
11:42:32 3 willingness to make sure that any modification to the surgical
11:42:39 4 procedure could be done and would be something that they could
11:42:44 5 make happen. And then, the reference to past performance on this
11:42:50 6 very thing where they had had doctors within their services
11:42:57 7 section where they had modified the procedures in the interest
11:43:02 8 not of the patient but in the interest of targeting valuable
11:43:08 9 tissues that were considered to be of value to the researchers.

11:43:12 10 Q. Why did that raise concern for you?

11:43:16 11 A. Because the priority was not the patient. The priority in
11:43:22 12 that case was deviating from the primary concern about the
11:43:25 13 patient. The patient that the doctor had that doctor-patient
11:43:32 14 contract with.

11:43:34 15 Q. And after providing your medical judgment to the Inspector
11:43:39 16 General, have you had a chance to go back over and review the
11:43:42 17 materials, specifically, the video?

11:43:43 18 A. I have. I reviewed the transcript as well as my personal
11:43:47 19 notes.

11:43:48 20 Q. As we sit here today, has your judgment of that video
11:43:52 21 changed at all?

11:43:53 22 A. Not at all.

11:43:54 23 Q. Pass the witness, your Honor.

11:44:01 24 CROSS-EXAMINATION

11:44:01 25 BY MR. WATKINS:

11:44:05 1 Q. Which doctor did you see in the video that said he altered
11:44:10 2 the abortion procedure for the purposes of obtaining fetal
11:44:13 3 tissue?
11:44:13 4 A. I did not see a doctor in the video.
11:44:16 5 Q. All right.
11:44:17 6 A. I read in the transcript that was from Ms. Farrell's
11:44:21 7 testimony.
11:44:22 8 Q. All right. And I'm sorry. I didn't understand that.
11:44:26 9 Wasn't in the video?
11:44:26 10 A. I'm sorry? I didn't understand your question. I did not
11:44:30 11 see a doctor in the video that I'm aware of.
11:44:33 12 Q. All right. Do you know of any doctor from Planned
11:44:36 13 Parenthood who altered the abortion procedure in order to benefit
11:44:41 14 the extraction of fetal tissue?
11:44:42 15 A. No. The reference was made by Ms. Farrell that there had
11:44:45 16 been physicians in the facility that had done it previously. She
11:44:48 17 did not mention their names.
11:44:49 18 Q. Had altered the abortion procedures or had altered the
11:44:55 19 procedures in order to get the fetal tissue?
11:44:58 20 A. My understanding, it was the abortion procedures because
11:45:01 21 there were references about changing the position of the fetus
11:45:04 22 within the uterus to be able to advantage targeting tissues.
11:45:10 23 Q. Well, are there occasions when the position of the fetus has
11:45:16 24 changed when there is no research involved?
11:45:18 25 A. I would have to defer that judgment to a OB/GYN doctor.

11:45:23 1 Q. All right. So you don't know whether any, ever, change in
11:45:28 2 the position of the fetus at Planned Parenthood was ever done
11:45:31 3 solely for the purpose of benefitting research?

11:45:34 4 A. I was interpreting what the director of research was stating
11:45:39 5 and how she was selling the facility to these would-be vendors.

11:45:43 6 Q. I'm not asking you about your interpretation.

11:45:45 7 My question is, did you see anything in the video that
11:45:48 8 showed you that a surgeon had altered the abortion procedure for
11:45:52 9 the purpose of obtaining fetal tissue?

11:45:55 10 A. No. I did not.

11:46:00 11 Q. Now, you don't believe that the previous witness has any
11:46:04 12 expertise in interpreting medical terms, do you?

11:46:08 13 A. If the previous witness you're referring to Inspector
11:46:12 14 General Bowen?

11:46:12 15 Q. Yes.

11:46:13 16 A. And your question again was, sir?

11:46:15 17 Q. You don't contend that he has any expertise in interpreting
11:46:19 18 medical terms or medical procedures.

11:46:23 19 A. Probably not the medical procedures. He's not been in that
11:46:29 20 environment. But as any well-educated citizen, I think that
11:46:34 21 there's a level of understanding of medical terms. Yes.

11:46:38 22 Q. Mr. Bowen probably then would have the same ability to
11:46:44 23 interpret those medical terms as I would.

11:46:46 24 A. Yes.

11:46:49 25 Q. Now, and you just indicated that you can't tell me whether

11:46:55 1 or not changing the position of the fetus was ever done for the
11:46:59 2 purpose of obtaining fetal tissue.

11:47:01 3 A. That would have to be the opinion of an OB/GYN doctor with
11:47:05 4 that experience.

11:47:05 5 Q. Pass the witness.

11:47:22 6 RE-DIRECT EXAMINATION

11:47:22 7 BY MR. BIGGS:

11:47:25 8 Q. Dr. Spears, what is the role of the CMO? Why is it
11:47:32 9 important to the Inspector General's Office?

11:47:34 10 A. Well, the Inspector General's Office is charged with, again,
11:47:39 11 integrity, oversight of all public funds that are spent on any
11:47:47 12 health and human service in the state of Texas, and to be able to
11:47:51 13 do that, they need to have subject-matter experts.

11:47:55 14 Q. Do they have experts in every single subspecialty at the
11:48:00 15 IG's Office?

11:48:01 16 A. No. That would be impractical.

11:48:04 17 Q. Is it part of your duties to provide these opinions?

11:48:08 18 A. That is my primary duty.

11:48:11 19 Q. And what specifically qualifies you to provide these
11:48:17 20 opinions?

11:48:17 21 A. The judgment that I made had to do not with the technical
11:48:22 22 performance of an abortion. Again, I can see that I would have
11:48:27 23 no way of knowing what is proper to do in the technical
11:48:32 24 performance of an abortion procedure. But in terms of that
11:48:38 25 contract, that relationship with the doctor and the patient,

11:48:42 1 which is to do where the patient is the primary -- the primary
11:48:48 2 motivation for the patient's good immediately and in the
11:48:53 3 long-term over the years following. That is a physician's
11:48:58 4 responsibility. Not for some subordinate or not some other
11:49:04 5 motivation, but strictly for that patient's welfare.

11:49:08 6 Q. Thank you. Pass the witness, your Honor.

11:49:11 7 RE-CROSS EXAMINATION

11:49:13 8 BY MR. WATKINS:

11:49:13 9 Q. Quickly.

11:49:16 10 Well, you could concede, would you not, that if an
11:49:19 11 abortion provider had provided -- in doing the abortion didn't
11:49:23 12 know if it was for research, then there wouldn't be any problem.

11:49:28 13 A. Absolutely. If there was no other motivation other than
11:49:32 14 singularly attentively caring for that patient's immediate and
11:49:36 15 future needs, then no.

11:49:38 16 Q. All right. And there can be in a doctor's mind another
11:49:42 17 purpose for the way he's doing the surgery, but if he doesn't --
11:49:46 18 if he pays attention to the patient and only tends to the
11:49:49 19 patient, it's all right if he has some other motive, isn't there?

11:49:52 20 A. Right. As long as the patient is the primary focus of that
11:49:55 21 a surgical procedure in every step of that surgical procedure.

11:49:58 22 Q. So an orthopod who's doing surgery wants to go play golf and
11:50:02 23 he'd like to do the thing really fast so he could make his tee
11:50:06 24 time, that's all right as far as his focus is doing it at the
11:50:08 25 speed that the patient requires.

11:50:10 1 A. No. I don't believe that's all right.

11:50:12 2 Q. You don't?

11:50:12 3 A. No. I don't believe that rushing through a surgery for
11:50:16 4 personal convenience or personal interest is okay.

11:50:19 5 Q. Well, that wasn't my question.

11:50:20 6 My question is, the speed that he applied to that
11:50:23 7 operation was done solely -- was done for the purpose of the
11:50:26 8 patient. It's okay for him to have another agenda.

11:50:29 9 A. Yes. I agree with that.

11:50:36 10 MR. BIGGS: Nothing further from this witness, your
11:50:38 11 Honor.

11:50:38 12 THE COURT: May the witness be excused?

11:50:40 13 MR. BIGGS: Yes, your Honor.

11:50:41 14 MR. WATKINS: Yes, your Honor.

11:50:42 15 THE COURT: You may be excused.

11:50:43 16 THE WITNESS: Thank you, Judge.

11:50:51 17 THE COURT: Where are we?

11:50:53 18 MR. STEPHENS: We have a witness we could call now,
11:50:55 19 unless the Court will take --

11:50:58 20 THE COURT: Well, we've only got nine minutes. Is
11:51:00 21 it -- as we say in the business, is it a nine-minute witness?

11:51:04 22 MR. STEPHENS: Not a nine-minute witness.

11:51:06 23 THE COURT: Well, at least you're honest. Most people
11:51:08 24 would say yes. How many other witnesses do you have, three or
11:51:12 25 four?

11:51:13 1 MR. STEPHENS: As of now, I believe three.

11:51:16 2 THE COURT: Three. All right. Okay.

11:51:22 3 MR. STEPHENS: We may have four, your Honor. For
11:51:26 4 today, I think we've identified three more.

11:51:36 5 THE COURT: Okay. We'll recess until 1:30. 1:30
11:51:40 6 sharp.

12:07:50 7 (Lunch recess.)

13:28:30 8 THE COURT: You may call your next witness.

13:28:42 9 MR. STEPHENS: Your Honor, the state calls Professor
13:28:44 10 Carter Snead.

13:28:53 11 (Witness sworn.)

13:29:11 12 THE COURT: Tell us your full name and spell your last,
13:29:15 13 please.

13:29:16 14 THE WITNESS: My full name is Orlando Carter Snead.
13:29:19 15 Last name spelled, S-N-E-A-D.

13:29:22 16 THE COURT: You may proceed.

13:29:22 17 ORLANDO C. SNEAD, called by the Defendant, duly sworn.

13:29:22 18 DIRECT EXAMINATION

13:29:22 19 BY MR. STEPHENS:

13:29:24 20 Q. Good afternoon, Professor Snead.

13:29:26 21 Where are you currently employed?

13:29:28 22 A. I'm a professor of law at the University of Notre Dame.

13:29:32 23 Q. Could you briefly describe your educational background?

13:29:35 24 A. I studied as an undergraduate at the -- at St. John's
13:29:39 25 College in Annapolis, Maryland. I went to law school at

13:29:42 1 Georgetown University by way of formal education.

13:29:46 2 Q. And could you briefly also describe your employment

13:29:51 3 background?

13:29:51 4 A. I'm sorry?

13:29:51 5 Q. Your previous employment.

13:29:54 6 A. After graduating from law school, I clerked on the U.S.

13:29:57 7 Court of Appeals for the Tenth Circuit, followed by a brief

13:29:59 8 period of time in private practice in Washington D.C. Then I

13:30:02 9 became the general counsel of the President's Council on

13:30:06 10 Bioethics, served in that role from 2002 to 2005. During that

13:30:09 11 time, I also served as the representative of the U.S. government

13:30:13 12 before the United Nations Education, Science and Culture

13:30:17 13 Organization for Bioethical Issues.

13:30:20 14 I was the permanent observer for the U.S. government at

13:30:24 15 the Council of Europe for their steering committee on bioethics.

13:30:27 16 And then, I joined the faculty at the University of Notre Dame in

13:30:30 17 2005 as an associate professor. I was tenured and promoted to

13:30:33 18 full professor in 2011, after which I became the director of the

13:30:37 19 Notre Dame Center for Ethics and Culture.

13:30:41 20 Q. And have you published journal articles regarding bioethical

13:30:47 21 issues?

13:30:47 22 A. Yes. I have articles, book chapters, commentaries. I've

13:30:52 23 published between 40 and 50 articles, both in academic settings,

13:30:56 24 academic presses and the like.

13:30:59 25 Q. As well as peer-reviewed journals?

13:31:02 1 A. Yes.

13:31:02 2 Q. Brian, could you bring up Defendants' Exhibit 96, which has
13:31:06 3 been pre-admitted? Professor Snead, is this a copy of your CV?

13:31:11 4 A. It appears to be, yes.

13:31:13 5 Q. And does it reflect your education, experience and
13:31:18 6 publications that you've published in journals?

13:31:21 7 A. Yes, it does.

13:31:22 8 Q. Your Honor, the state moves to qualify Professor Snead as an
13:31:26 9 expert in field of bioethics.

13:31:29 10 MS. CLAPMAN: No objections.

13:31:30 11 THE COURT: All right.

13:31:31 12 Q. (BY MR. STEPHENS) Professor Snead, have you been asked to
13:31:33 13 offer an expert opinion in this case?

13:31:35 14 A. I have.

13:31:35 15 Q. And could you describe for the Court what materials you have
13:31:39 16 reviewed in forming your opinion?

13:31:41 17 A. I reviewed the materials that were provided by the Attorney
13:31:44 18 General's Office that included an eight-and-a-half hour video,
13:31:48 19 which I watched, transcript of that video, which I reviewed on
13:31:53 20 several different occasions. Also, the materials created by the
13:31:58 21 U.S. House of Representatives and the U.S. Senate, as well as the
13:32:02 22 pleadings in this case. I, also, for my own reflection, reviewed
13:32:07 23 a variety of materials, both federal laws, federal regulations,
13:32:13 24 decisions of different federal bioethics advisory commissions,
13:32:17 25 and other scholarly materials to formulate an opinion on the

13:32:20 1 question that you asked me about.

13:32:21 2 Q. Did you also read the Fifth Circuit's opinion in Planned
13:32:26 3 Parenthood vs. Gee?

13:32:27 4 A. I did. Yes.

13:32:29 5 Q. And do you recall the standard that the Fifth Circuit
13:32:32 6 applied for the definition of qualified?

13:32:35 7 MS. CLAPMAN: Objection. This is calling for a legal
13:32:37 8 analysis.

13:32:40 9 THE COURT: I think he's asking for a definition and an
13:32:45 10 opinion we can all look up and read. Ask your next question.

13:32:49 11 Q. (BY MR. STEPHENS) Professor Snead, could you describe the
13:32:54 12 relationship between ethics and law as related to the issues in
13:32:58 13 this case?

13:32:58 14 A. Sure. The Texas Medical Association Board of Councilors has
13:33:02 15 a nice statement on this point in the relationship between law
13:33:05 16 and ethics, and obviously ethics and law are deeply connected to
13:33:09 17 one another. The demands of that -- yes, sir.

13:33:11 18 THE COURT: Would you read the question to the witness,
13:33:13 19 please?

13:33:30 20 THE WITNESS: Sorry.

13:33:30 21 (Last question read back.)

13:33:34 22 THE WITNESS: A more concise response is what you're
13:33:35 23 asking for, Judge.

13:33:37 24 THE COURT: I'm praying, actually.

13:33:39 25 THE WITNESS: I will -- I'll join you in that.

13:33:41 1 A. Yes. The answer is yes. The demands of ethics are more
13:33:44 2 stringent than the demands of law. And moreover, the opinions --
13:33:47 3 I've based my opinion on not just studying ethical precepts but,
13:33:51 4 also, relevant federal regulations and federal laws that relate
13:33:55 5 to fetal tissue research which reflect why they shared ethical
13:33:59 6 principles.

13:33:59 7 Q. Okay. And what are some of the widely shared ethical norms
13:34:02 8 or ethical principles that apply in the area of fetal tissue
13:34:05 9 research?

13:34:05 10 A. The first principle ethical good at issue in this case which
13:34:10 11 has already been discussed is the good of the patient obviously.
13:34:12 12 That's a cornerstone of medical ethics, but the singular focus
13:34:15 13 and the well-being and flourishing of the patient is what the
13:34:18 14 physician or the healthcare provider should attend to. So the
13:34:20 15 good of the patient is the first.

13:34:21 16 If you study the development of this debate from the
13:34:24 17 early 1970s on fetal tissue research and you look at the opinions
13:34:28 18 of the advisory commissions and the legal standards, it's clear
13:34:31 19 that another important ethical good that emerges in this context
13:34:34 20 is safeguarding the integrity of the medical profession, the
13:34:38 21 reputation of the medical profession.

13:34:39 22 What gave rise to the entirety of the debate over fetal
13:34:42 23 tissue transplantation research in the early 1970s were reports
13:34:46 24 of experiments -- outlier experiments involving living fetuses
13:34:53 25 who were to be aborted, which were shocking to the conscience of

13:34:56 1 many, in fact, led Congress to convene hearings and pass the
13:34:59 2 National Research Act, and so on. So preventing outlier medical
13:35:03 3 experimentation that calls into question the integrity of the
13:35:05 4 medical profession is an ethical good that matters in this
13:35:08 5 context.

13:35:08 6 A third is --

13:35:09 7 MS. CLAPMAN: Your Honor, I'm sorry. Could we please
13:35:12 8 instruct the witness --

13:35:12 9 THE COURT: You understand when a lawyer stands, you
13:35:14 10 really ought to stop.

13:35:15 11 THE WITNESS: I'll stop. I'm a professor, not a
13:35:17 12 litigator. I apologize.

13:35:18 13 THE COURT: That's all right.

13:35:19 14 MS. CLAPMAN: Instruct the witness not to answer in
13:35:20 15 narrative form.

13:35:22 16 THE COURT: He is writing a book.

13:35:24 17 THE WITNESS: That's what we do. I apologize.

13:35:25 18 THE COURT: No. It's all right. It's -- you know,
13:35:29 19 it's kind of mean for a law student and a graduate law student
13:35:33 20 and a lawyer to get a law professor on the stand.

13:35:36 21 THE WITNESS: Mean to whom, your Honor?

13:35:38 22 THE COURT: Well, it's -- you don't want me to answer
13:35:41 23 that.

13:35:41 24 THE WITNESS: Okay. I appreciate your solicitude.

13:35:44 25 THE COURT: The whole point is, they're going to ask

13:35:46 1 you specific questions. Have you ever been a witness before?

13:35:49 2 THE WITNESS: Not in a courtroom, no, sir. Before

13:35:51 3 Congress and state legislatures.

13:35:53 4 THE COURT: Well, this is different.

13:35:55 5 THE WITNESS: Seems different.

13:35:56 6 THE COURT: They're going to ask you specific

13:35:58 7 questions, and your answer is just to be specific.

13:36:01 8 THE WITNESS: Just to be precise.

13:36:02 9 THE COURT: You don't have to say -- you know, if it's

13:36:04 10 a "Yes" or "No" question, you could say "Yes" or "No" because, I

13:36:08 11 guarantee you, they're going to have a lot of questions. That

13:36:10 12 way the lawyers get to control what's in the record, which is

13:36:15 13 important from their client's standpoint. You might be full of

13:36:21 14 really good information that they may not ever ask, but that's

13:36:24 15 their problem if they do.

13:36:26 16 But be as limiting as you can. Answer the question.

13:36:30 17 We don't need to know about Plato or any of that stuff. And I

13:36:36 18 guarantee you that the lawyers will be asking you enough

13:36:39 19 questions.

13:36:40 20 THE WITNESS: Fill the time.

13:36:41 21 THE COURT: Well, to help me along in making a

13:36:44 22 decision.

13:36:44 23 THE WITNESS: Thank you, Judge.

13:36:45 24 THE COURT: Yes, sir.

13:36:46 25 Q. (BY MR. STEPHENS) Professor Snead, you had testified -- I'd

13:36:48 1 asked you about general ethical norms that apply in the area of
13:36:52 2 fetal tissue research, and I believe that you had testified
13:36:55 3 regarding patient safety and risks to the fetus; is that correct?
13:37:00 4 I think that's about as far as you'd gotten when we --
13:37:02 5 A. I wouldn't classify it as risks to the fetus. It's related
13:37:05 6 to preserving the integrity of the medical profession and its
13:37:09 7 reputation.
13:37:09 8 Q. Is commercialization of fetal body parts also an ethical
13:37:13 9 norm?
13:37:13 10 A. Yes. There's a widespread opposition to creating a market
13:37:17 11 in any body parts, including fetal body parts.
13:37:20 12 Q. Okay. Is it another ethical concern in this area related to
13:37:27 13 the choice to have an ab -- the choice for an abortion should not
13:37:31 14 be influenced by research?
13:37:32 15 A. That's also a consistent theme that runs throughout the
13:37:36 16 literature and the debates.
13:37:37 17 Q. And are these ethical norms reflected in federal law?
13:37:40 18 A. They are.
13:37:41 19 Q. Okay. How so?
13:37:44 20 A. Well, the fetal tissue regulations -- well, the actual
13:37:49 21 statutory authority for fetal tissue research that's funded by
13:37:52 22 the federal government, 42 U.S.C. 289g-1, which has been
13:37:57 23 mentioned, I think, several times here.
13:37:59 24 Q. I'm going to bring up Defendants' Exhibit 6, which is a copy
13:38:01 25 of 289g-1. And you can continue. You were describing the

13:38:17 1 ethical norms reflected in --

13:38:18 2 A. Right. So if you scroll down there and you can see --

13:38:22 3 you'll find that there is an injunction, there's a rule against

13:38:26 4 manipulating the timing, method of an abortion solely for the

13:38:30 5 sake of research, and I think the doctor has to affirm that he or

13:38:34 6 she did not do that in the abortion procedure. And there's also

13:38:40 7 a statement that reflects the same concern where researchers have

13:38:43 8 to affirm that they were not involved in decisions relating to

13:38:46 9 the timing or method of the abortion, as well.

13:38:54 10 Q. When you watched the video, you testified that you watched

13:38:58 11 the full video?

13:38:58 12 A. I did. Yes.

13:38:59 13 Q. That's the video that's Defendants' Exhibit 2; is that

13:39:01 14 right?

13:39:01 15 A. Yes.

13:39:03 16 Q. When you watched the video that's been admitted as

13:39:06 17 Defendants' Exhibit 2, did you see any violations of the ethical

13:39:11 18 norm that there should be no alteration in the timing, method, or

13:39:15 19 procedure of an abortion solely for research?

13:39:17 20 MS. CLAPMAN: Objection, your Honor. This witness is

13:39:19 21 not qualified to analyze what was happening in the video in the

13:39:23 22 discussion about how products of conception are handled and

13:39:26 23 whether anything in that conversation indicated that abortion

13:39:30 24 methods were being -- both methods or procedures were being

13:39:33 25 changed. So these questions can be asked in a hypothetical

13:39:36 1 manner, but this witness is not qualified to say whether or not
13:39:39 2 that video indicated any alterations of abortion procedures or
13:39:44 3 methods.

13:39:45 4 THE COURT: Well, I don't -- I have not seen the video,
13:39:49 5 so I don't know. Is there in the video copy of a procedure?

13:39:57 6 MR. STEPHENS: What do you mean copy of a procedure?

13:39:59 7 THE COURT: Do you have an abortion procedure, or the
13:40:02 8 handling of the tissue, or anything else? I mean, I've just seen
13:40:07 9 one or two flicks of it. You're asking him to draw a conclusion
13:40:11 10 over what he saw in the video. I don't know what he saw in the
13:40:14 11 video, but I doubt seriously, because I would have heard about
13:40:19 12 it, that there was a procedure recorded.

13:40:22 13 MR. STEPHENS: There was not a procedure recorded.

13:40:24 14 THE COURT: Then I sustain the objection.

13:40:28 15 Q. (BY MR. STEPHENS) Professor Snead, did you see any evidence
13:40:31 16 in the video indicating that Planned Parenthood has altered or is
13:40:40 17 willing to alter an abortion procedure for research purposes?

13:40:43 18 MS. CLAPMAN: Same objection. He's not qualified to
13:40:46 19 interpret that video in terms of the procedures being discussed
13:40:50 20 and what that meant.

13:40:53 21 THE COURT: Question is whether they have altered or
13:40:57 22 willingness to alter. That's going to be a question that I'm
13:41:04 23 going to have to decide, and I can tell you now, I've never known
13:41:10 24 but one person in this world who testified today who thought
13:41:16 25 willingness included accomplished facts.

13:41:21 1 Now, I think you can ask him questions about his
13:41:26 2 opinions, although I take it that they had absolutely nothing to
13:41:31 3 do with the termination letter. So I'm not sure how material it
13:41:36 4 is. But it's your time. But I sustain the objection to the
13:41:39 5 question asked. You're going to have to be specific as to what
13:41:43 6 you really are asking him.

13:41:47 7 As I understand, you're asking him right now a question
13:41:51 8 that those eight-and-a-half hours of video -- and I have no idea
13:41:57 9 what he's referring to nor you.

13:41:58 10 MR. STEPHENS: Okay. I can limit the scope of the
13:42:01 11 question.

13:42:01 12 THE COURT: I feel competent you could.

13:42:03 13 MR. STEPHENS: Okay.

13:42:04 14 Q. (BY MR. STEPHENS) Professor Snead, were you in the courtroom
13:42:07 15 for Mr. Bowen's testimony this morning?

13:42:09 16 A. Yes.

13:42:09 17 Q. Did you see the video clips that I showed or that Mr. Bowen
13:42:13 18 -- that were shown during Mr. Bowen's direct examination?

13:42:16 19 A. Yes, I did.

13:42:17 20 Q. Okay. And in those video clips, did you see what you would
13:42:23 21 consider, as a bioethics expert, any violations of ethical norms?

13:42:27 22 MS. CLAPMAN: Same objection.

13:42:29 23 THE COURT: I'm going to let him speak to it. Go
13:42:33 24 ahead.

13:42:33 25 A. So what concerned me from an ethical perspective in the

13:42:36 1 videos that I saw were twofold. One was --

13:42:38 2 THE COURT: No, no, no --

13:42:38 3 THE WITNESS: Okay. Sorry.

13:42:40 4 MR. STEPHENS: The clips.

13:42:49 5 THE COURT: Read him the question.

13:42:49 6 (Last question read back.)

13:42:51 7 A. Yes.

13:42:53 8 Q. (BY MR. STEPHENS) Okay. Could you describe the ethical
13:42:56 9 norms that you would consider to have been violated as shown in
13:42:59 10 those clips?

13:43:00 11 A. It appeared to me that there was a representation by an
13:43:05 12 official in the clip, the director of research that her
13:43:11 13 organization had, many times in the past, modified abortion
13:43:14 14 procedures solely for the sake of research.

13:43:18 15 Q. Okay. And you testified that you watched the full video
13:43:26 16 that's been admitted as Defendants' Exhibit 2; is that right?

13:43:28 17 A. That's correct.

13:43:31 18 Q. Were there other specific instances or specific portions of
13:43:39 19 the video that you recall that I didn't show this morning that
13:43:45 20 you would consider as violating ethical norms?

13:43:47 21 A. Yes.

13:43:48 22 Q. Okay. Could you -- Brian, could you show -- why don't you
13:43:56 23 first describe those for the Court.

13:43:58 24 THE COURT: Well --

13:44:00 25 MR. STEPHENS: Or I could show the clips.

13:44:01 1 THE COURT: Do you know the answer? Do you know his

13:44:05 2 answer?

13:44:06 3 MR. STEPHENS: Yes. I think he could describe --

13:44:09 4 THE COURT: Okay. Well, then, put it up there.

13:44:12 5 Q. (BY MR. STEPHENS) Brian, could you play 14:10:50 through

13:44:17 6 14:12:45 from Exhibit 2?

13:44:22 7 (Audio and video file played.)

13:46:15 8 Q. Brian, could you also show 14:33:12 through 14:33:31?

13:46:22 9 (Audio and video file played.)

13:46:36 10 MS. CLAPMAN: Your Honor, if we could take the clips
13:46:40 11 individually, I don't understand why multiple clips would have to
13:46:42 12 be shown if -- the expert either saw a violation in the clip that
13:46:45 13 was shown or didn't see a violation. That seems like in the vein
13:46:50 14 of a narrative answer. That clip either reflected an ethical
13:46:54 15 violation or it didn't.

13:46:55 16 THE COURT: Okay.

13:46:57 17 MS. CLAPMAN: So I object to --

13:46:57 18 THE COURT: He says he'll take them individually.

13:47:03 19 Q. (BY MR. STEPHENS) Professor Snead, what ethical norms are
13:47:07 20 raised by the clip that we just saw?

13:47:09 21 A. In that clip, you see the director of the Ambulatory
13:47:12 22 Surgical Center talking about the key variables in obtaining
13:47:16 23 specimens that are valuable or useful, in particular, for
13:47:19 24 research purposes only in the context of an abortion are not only
13:47:23 25 the dilation of the cervix of the patient but, also, the pain

13:47:26 1 tolerance of the patient. And talks about the number of passes
13:47:32 2 of the forceps and the capacity -- the cooperation -- she uses
13:47:35 3 the word "cooperation" of the patient in light of the painful
13:47:39 4 nature of the procedure is a key factor in obtaining the specimen
13:47:44 5 that is preferred. And that clearly shows or shows to me -- at
13:47:49 6 least appears to show to me a willingness to modify an abortion
13:47:51 7 procedure which causes additional discomfort to the patient
13:47:54 8 solely for the sake of research.

13:47:55 9 MS. CLAPMAN: Objection, your Honor. The witness is
13:47:57 10 offering medical testimony that he's not qualified to offer.

13:48:00 11 THE COURT: He is and I sustain the objection and
13:48:02 12 strike the answer.

13:48:11 13 Q. (BY MR. STEPHENS) Professor Snead, does the clip that you
13:48:13 14 just saw raise concerns solely from an ethical standpoint?

13:48:18 15 A. Certainly. It raises the concern of an assurance and a
13:48:26 16 backwards-looking comment regarding modifying an abortion
13:48:29 17 procedure that causes pain solely for the sake of research.

13:48:32 18 MS. CLAPMAN: Same objection. The witness is
13:48:33 19 continuing to offer medical opinion about how this discussion
13:48:38 20 should be interpreted that he's not qualified to interpret.

13:48:41 21 THE COURT: Well, he's assuming that whatever
13:48:45 22 alteration and the real issue is, is there any evidence of an
13:48:52 23 alteration, but that's to be decided at a later time.

13:48:59 24 MS. CLAPMAN: And we do not object to him offering
13:49:03 25 hypothetical -- I'm sorry, your Honor.

13:49:04 1 THE COURT: I get to say something once in a while.

13:49:07 2 And he's asking a question that is it an ethical violation to

13:49:15 3 cause pain in the procedure for the purpose of obtaining tissue.

13:49:25 4 I suspect that's really the doctor, but he's an ethics professor

13:49:30 5 from Notre Dame, so he can answer that question. And he did

13:49:35 6 answer the question. So let's ask the next question.

13:49:39 7 Q. (BY MR. STEPHENS) Professor Snead, if a woman were to

13:49:52 8 consent to a procedure knowing that it might involve more pain,

13:49:58 9 then would that address ethical concerns?

13:50:02 10 A. It would -- if there were robust informed consent, it might

13:50:06 11 very well cure concerns about patient well-being. If there were

13:50:10 12 robust informed consent.

13:50:11 13 Q. Okay. Brian, could you bring up a copy of Defendants'

13:50:14 14 Exhibit 191?

13:50:29 15 Professor Snead, were you in the courtroom yesterday

13:50:31 16 when Ms. Farrell testified that Defendants' Exhibit 191 is the

13:50:36 17 consent form used by Planned Parenthood Gulf Coast?

13:50:40 18 A. Yes.

13:50:41 19 Q. Does this form used by Planned Parenthood Gulf Coast address

13:50:45 20 ethical concerns related to altering an abortion procedure in a

13:50:49 21 way that causes increased pain?

13:50:53 22 A. This form doesn't advise a prospective patient of increased

13:50:58 23 pain. In fact, it says that I understand there will be no

13:51:03 24 changes to how or when my abortion is done in order to get the

13:51:06 25 blood or the tissue. Obviously the purpose of informed consent

13:51:10 1 is to provide information about risks and benefits so that a
13:51:14 2 reasonable person can make a judgment. And in my -- as applied
13:51:18 3 to a painful experience solely for the sake of research or
13:51:22 4 increasing pain solely for the sake of research, this form would
13:51:25 5 not be sufficient.

13:51:27 6 Q. Brian, could you bring up a copy of Defendants' Exhibit 192?
13:51:36 7 Professor Snead, there was some confusion yesterday
13:51:40 8 about whether another form, I believe Defendants' Exhibit 192, is
13:51:46 9 also used by Planned Parenthood Gulf Coast in conjunction with
13:51:49 10 Defendants' Exhibit 191. Do you recall that?

13:51:53 11 A. Possibly, yes.

13:51:54 12 Q. Okay. If this form were used with Defendants' Exhibit 191,
13:52:03 13 would that address the ethical concerns raised and addressed in
13:52:10 14 relation to Defendants' Exhibit 191?

13:52:12 15 A. Only if it's -- only if it clearly stated the additional
13:52:17 16 risks of pain and discomfort, which under this form, it says
13:52:22 17 there are no additional risks posed to the participant by
13:52:25 18 consent. So this particular form, if it were used, an advance of
13:52:28 19 a study that would cause additional pain solely for the sake of
13:52:31 20 research, this would also be inadequate.

13:52:38 21 Q. Was there evidence in the video that you saw that Planned
13:52:41 22 Parenthood has engaged in actual -- has engaged in actual
13:52:45 23 practices that violated ethical norms?

13:52:47 24 A. There is conversation in the video, both by the director of
13:52:51 25 research and by the head of the Ambulatory Surgical Center, that

13:52:56 1 one of the -- competitive advantages of Planned Parenthood Gulf
13:53:00 2 Coast for the supply of fetal tissue is they have great deal of
13:53:04 3 experience changing and altering the abortion procedure solely to
13:53:07 4 fit the needs of the researcher.

13:53:09 5 Q. Okay. And is there also evidence in the video that gives an
13:53:13 6 assurance or a willingness that Planned Parenthood will engage in
13:53:17 7 practices that violate ethical norms?

13:53:21 8 A. I believe yes. I believe the comments made by the --
13:53:25 9 especially made by the Ambulatory Surgical Center director naming
13:53:29 10 doctors who are trained and willing and able to do precisely
13:53:32 11 those things.

13:53:33 12 MS. CLAPMAN: I'm sorry to interrupt the witness, but
13:53:35 13 he continues to mischaracterize the evidence and to give medical
13:53:38 14 testimony.

13:53:38 15 THE COURT: Well, he's not just giving medical
13:53:40 16 testimony, he's able to -- well, you've been here the whole time?

13:53:51 17 THE WITNESS: No, sir. Not the whole time.

13:53:52 18 THE COURT: So you haven't heard the testimony of what
13:53:55 19 actually the facts are.

13:53:55 20 THE WITNESS: No, sir. I was here -- I arrived after
13:53:58 21 lunch yesterday, and I've reviewed the pleadings in the case, as
13:54:01 22 well.

13:54:02 23 THE COURT: Is he exempted from the rule?

13:54:05 24 MR. STEPHENS: Your Honor, we have an agreement that
13:54:06 25 experts will be exempted from the rule.

13:54:08 1 THE COURT: Might help, you know, if you tell the Court
13:54:10 2 what rules are being enforced in the Court's courtroom.

13:54:16 3 Okay. He's testifying that the willingness and
13:54:24 4 assurances are what? He's going to define willingness, like your
13:54:32 5 last witness?

13:54:32 6 MR. STEPHENS: No. I would ask him whether what he saw
13:54:36 7 in the video related to the willingness, whether that raises
13:54:40 8 concerns as to violations of ethical norms.

13:54:42 9 THE COURT: And he saw it before the termination
13:54:47 10 letter?

13:54:50 11 MR. STEPHENS: He did not see the video before the
13:54:52 12 termination letter.

13:55:01 13 THE COURT: Then why is it relevant?

13:55:04 14 MR. STEPHENS: Your Honor, because the Court will be
13:55:09 15 asked under the Fifth Circuit --

13:55:10 16 THE COURT: I've heard testimony. I haven't heard one
13:55:13 17 word of testimony that any procedure involving tissue for -- in
13:55:21 18 research had occurred after 2012. The termination is in 2015.
13:55:31 19 Now, he can look at a video and tell what they did in 2015? I
13:55:41 20 mean, he's really a good witness.

13:55:46 21 MR. STEPHENS: Your Honor --

13:55:47 22 THE COURT: Go ahead and ask your questions. But I
13:55:53 23 think, really, you should keep in mind that I'm going to make the
13:55:57 24 determination. I don't think that this gentleman is going to
13:56:02 25 help me make a determination as to whether or not the termination

13:56:07 1 given under the circumstances that it was given by one person, a
13:56:14 2 nonmedical person with the support of your orthopedic doctor who
13:56:21 3 just testified, and that he had sufficient evidence to give it.
13:56:25 4 That's just part of it, but that is an important part.

13:56:32 5 And I'm interested primarily in what was done, not what
13:56:36 6 was willing to be done. That's what I'm really concerned about.
13:56:42 7 And I think y'all should be concerned about it, all of you. Ask
13:56:48 8 your next question.

13:56:52 9 MR. STEPHENS: Actually, that was my last question,
13:56:53 10 your Honor. So pass the witness.

13:57:06 11 CROSS-EXAMINATION

13:57:09 12 BY MS. CLAPMAN:

13:57:09 13 Q. Good afternoon, Professor Snead.

13:57:12 14 A. Hi.

13:57:15 15 Q. You've advocated that all research involving embryonic or
13:57:19 16 fetal tissue is unethical, correct?

13:57:21 17 A. No. That's not correct. I've not advocated research
13:57:24 18 involving fetal tissue is unethical. I have raised ethical
13:57:28 19 concerns about embryonic stem cell research.

13:57:34 20 Q. Could you please explain the difference to me?

13:57:36 21 A. Sure. Fetal tissue research is research on tissue that's
13:57:42 22 from an abortion that was procured entirely -- for entirely
13:57:45 23 different reasons than obtaining that tissue. A woman decides to
13:57:49 24 get an abortion, and then, the remains of the fetus are -- become
13:57:53 25 research material. That's, on its face, not objectionable so

13:57:58 1 long as there's not a relationship between the choice for the
13:58:00 2 abortion and the obtaining of the tissue itself.

13:58:04 3 Embryonic stem cell research by contrast involves the
13:58:08 4 intentional sometimes creation but certainly intentional
13:58:11 5 destruction of the embryo solely for the sake of research. So
13:58:14 6 it's a kind of total instrumentalization of a living organism for
13:58:18 7 the sake of research, as opposed to working with remains of an
13:58:21 8 organism that died for other reasons.

13:58:23 9 Q. Okay. So let's look at -- I'm going to hand you Plaintiffs'
13:58:29 10 Exhibit 246.

13:59:04 11 Do you recognize this piece?

13:59:05 12 A. Yes.

13:59:06 13 Q. And you wrote it?

13:59:08 14 A. I did.

13:59:08 15 Q. Okay. Could you just read the title?

13:59:10 16 A. I didn't choose the title, but the title is "Protect the
13:59:13 17 Weak and Vulnerable: The Primacy of the Life Issue."

13:59:15 18 Q. Okay. And turning to page 2 of that, please. Could you
13:59:21 19 please read the -- I should go old school.

13:59:38 20 On page 2, could you please read the sentence
13:59:42 21 asterisked?

13:59:45 22 THE COURT: You are reading from something I am unaware
13:59:51 23 that it's in evidence.

13:59:53 24 MS. CLAPMAN: It is Plaintiffs' Exhibit -- I'd like to
13:59:59 25 move it into evidence at this time.

14:00:01 1 MR. STEPHENS: Your Honor, we object on hearsay
14:00:03 2 grounds.

14:00:03 3 THE COURT: Sustain the objection.

14:00:05 4 MS. CLAPMAN: The witness has just testified that he
14:00:08 5 recognizes this document and that they are his own words.

14:00:10 6 THE COURT: Well, that's nice. He knows what he wrote,
14:00:14 7 I guess, but the document is a hearsay document.

14:00:22 8 MS. CLAPMAN: Okay.

14:00:23 9 THE COURT: Are you offering it for substantive
14:00:25 10 reasons?

14:00:26 11 MS. CLAPMAN: No, your Honor.

14:00:26 12 THE COURT: Okay. Then ask him -- I'm not -- ask your
14:00:34 13 questions. Just, you know, just ask --

14:00:37 14 Q. (BY MS. CLAPMAN) Professor Snead, did you write in this
14:00:39 15 article that abortion and embryo destructive research is nothing
14:00:47 16 short of a human catastrophe on an epic scale?

14:00:52 17 A. That's an allusion of what I wrote. That's take -- part of
14:00:55 18 a sentence combined with another part of a sentence. What I
14:00:59 19 wrote -- so no. I didn't write that in a contiguous sentence. I
14:01:03 20 wrote something to that effect. I'm happy -- I mean, I don't
14:01:06 21 want to answer -- I'm supposed to stop talking, right, Judge? I
14:01:09 22 only answer the question that's asked?

14:01:12 23 THE COURT: Well, you're a little late on stopping.

14:01:15 24 A. I mean, I'm happy -- put it this way, I'm not embarrassed to
14:01:17 25 answer the question. My view is that given the biological

14:01:23 1 reality that the human organism's life begins following
14:01:27 2 fertilization, that principles of equality, rightly understood,
14:01:31 3 should apply equally to all human organisms at all stages of
14:01:34 4 development; and therefore, the elective and intentional killing
14:01:38 5 of human organisms at any stage of development is a kind of
14:01:41 6 unjust activity.

14:01:42 7 Q. (BY MS. CLAPMAN) Okay. Professor Snead, do you believe that
14:01:45 8 embryo destructive research is nothing short of a human
14:01:48 9 catastrophe on an epic scale?

14:01:51 10 A. Do I believe that embryo destructive research is nothing
14:01:54 11 short of catastrophe, I believe that embryo destructive research
14:01:57 12 constitutes an unjust taking of life and that done --

14:02:02 13 Q. Professor Snead, I'm asking for a "Yes" or "No" answer at
14:02:04 14 this moment.

14:02:05 15 A. Oh, I'm sorry.

14:02:06 16 Q. I'm asking you if you believe that embryo destructive
14:02:09 17 research is nothing short of a human catastrophe on an epic
14:02:12 18 scale.

14:02:13 19 A. I do. Yes.

14:02:14 20 Q. Okay. And do you believe that fetal tissue -- use of fetal
14:02:20 21 tissue for scientific research is -- do you believe that embryo
14:02:24 22 destructive research for scientific -- let me start again.

14:02:30 23 Do you believe that embryo destructive research is a
14:02:33 24 terrible injustice?

14:02:34 25 A. Yes, I do.

14:02:35 1 Q. Okay. And how do you define embryo destructive research?

14:02:39 2 A. The intentional destruction of a living human embryo for the
14:02:42 3 purposes of just aggregating it to culture stem cells for use in
14:02:48 4 scientific research.

14:02:53 5 Q. Do you believe that the performance of research on fetal or
14:03:01 6 embryonic tissue that is the product of an abortion is ethical?

14:03:07 7 A. I believe that fetal tissue research practiced ethically can
14:03:11 8 be ethical. Yes.

14:03:30 9 Q. Professor Snead, you've published a lot of writing about
14:03:32 10 Planned Parenthood, correct?

14:03:33 11 A. Some.

14:03:34 12 Q. And I looked pretty hard, but I did not find anything
14:03:38 13 positive. Would that be a fair characterization?

14:03:40 14 A. I have not written anything positive. That's correct.

14:03:42 15 Q. Okay. And you've been writing about Planned Parenthood
14:03:44 16 since before the CMP videos came out, correct?

14:03:48 17 A. I don't know. Oh, yes. That is correct. Yes.

14:03:50 18 Q. Okay. For example, you've criticized Planned Parenthood for
14:03:54 19 having a sexual freedom agenda, correct?

14:03:57 20 MR. STEPHENS: Objection --

14:03:58 21 A. I don't remember saying that.

14:03:59 22 MR. STEPHENS: -- it's not relevant.

14:04:03 23 MS. CLAPMAN: It goes to bias, your Honor.

14:04:04 24 THE COURT: Yeah, it does.

14:04:05 25 A. I don't remember -- I may have written that. I don't

14:04:07 1 remember that phrase. That doesn't sound like something I've

14:04:09 2 written, but it's possible that I said that.

14:04:11 3 Q. (BY MS. CLAPMAN) Okay. If I showed you a publication on

14:04:13 4 which you're listed as a coauthor, would that help you remember?

14:04:16 5 A. It would. Yes.

14:04:30 6 Q. If you could turn, please, to page 4 and just review the

14:04:38 7 first sentence under Section 3. Do you see where I am?

14:04:45 8 A. Under Section 3, the sentence begins, it seems more?

14:04:49 9 Q. Yes.

14:04:50 10 A. Okay.

14:04:51 11 Q. Please review it. You just have to review that sentence.

14:04:54 12 A. Okay. I got it. Yes.

14:05:03 13 Q. Okay. Does that refresh your recollection that you have

14:05:06 14 criticized Planned Parenthood for having a sexual freedom agenda?

14:05:12 15 A. That sentence doesn't read like a criticism to me, actually.

14:05:15 16 I mean, it reads as an explanation, I think. It's basically

14:05:19 17 saying -- the sentence is actually about -- not about Planned

14:05:22 18 Parenthood centrally. It's about religious liberty and the

14:05:26 19 relationship of the state to religious liberty, and the

14:05:30 20 motivation to restrict religious speech or religious practice is

14:05:36 21 connected to an enthusiasm for autonomy -- sexual autonomy and

14:05:43 22 liberation, which I think fairly characterizes, in my judgment at

14:05:47 23 least, one of the core values of Planned Parenthood.

14:05:51 24 Q. So you're not criticizing the sexual freedom agenda of

14:05:55 25 Planned Parenthood in this sentence?

14:05:57 1 A. Can I read the sentence? The sentence says, it seems more
14:05:59 2 than a little likely that the degree to which this administration
14:06:02 3 is willing to silence or privatize religion is proportionate to
14:06:06 4 its passionate commitment to the population and sexual freedom
14:06:10 5 agendas of one of the administration's closest allies, the
14:06:13 6 Planned Parenthood Federation of America, the largest single
14:06:17 7 abortion provider in the United States.

14:06:18 8 Q. Okay.

14:06:18 9 A. So it's -- again, it's by way -- I think it's by way more of
14:06:22 10 explanation of the administration's motives rather than a
14:06:25 11 criticism as such of commitment to sexual autonomy as an
14:06:30 12 organizational principle or agenda.

14:06:33 13 Q. Okay. You've also said that in requiring contraceptive
14:06:38 14 coverage, President Obama has chosen the agenda of Planned
14:06:44 15 Parenthood over caring for the poor; is that correct?

14:06:46 16 A. I'm sorry. Where is that?

14:06:49 17 Q. Is it correct that you have said in the past that in
14:06:53 18 requiring contraceptive coverage, President Obama has chosen the
14:06:57 19 agenda of Planned Parenthood over caring for the poor?

14:07:00 20 A. I don't think that I said that. I used that formulation and
14:07:05 21 if -- I may know what you're referring to, but could you show me
14:07:09 22 what you're looking at? Or you don't have to, I guess.

14:07:11 23 Q. I will. I'm not trying to hide it from you.

14:07:22 24 So if you turn to the third page of this, it's page 3
14:07:26 25 of 4 at the top, and if you look at the top of that page and read

14:07:34 1 -- I apologize for the poor quality of the printout, but do you
14:07:38 2 see the sentence that says, Snead said?
14:07:41 3 A. I see, yeah. It's a little hard to read. Sorry. It's
14:07:46 4 difficult to read. The printout is difficult to read but it's --
14:07:51 5 I see where it says, Snead said.
14:07:53 6 Q. Okay. So having reviewed that, do you recall saying that in
14:07:59 7 requiring contraceptive coverage, President Obama has, quote,
14:08:03 8 chosen the agenda of Planned Parenthood over caring for the poor?
14:08:07 9 A. Maybe I'm not seeing what you're referring to because I
14:08:11 10 don't see those words on this part of the page.
14:08:12 11 Q. I'm looking at the second to last page of the printout. It
14:08:16 12 says 3 of 4.
14:08:18 13 A. Oh, 3 of 4. I'm sorry. I was on page 2 of 4.
14:08:21 14 Q. If you look at the top of that document, the first part of
14:08:25 15 the text. It says --
14:08:26 16 A. Yes.
14:08:27 17 Q. Okay. So reading that sentence, does that refresh your
14:08:30 18 recollection that you have said, in the past, that President
14:08:34 19 Obama has, quote, chosen the agenda of Planned Parenthood over
14:08:39 20 caring for the poor when he required insurance coverage for
14:08:42 21 contraception?
14:08:43 22 A. No. What I was -- no. It was not generally requiring
14:08:46 23 insurance coverage to cover contraception. It was requiring
14:08:47 24 religious organizations to provide healthcare and social services
14:08:51 25 to do things that are contrary to their deeply held views and

14:08:54 1 would, therefore, make them to close down and hurt the patient

14:08:56 2 population that they serve is what that is.

14:08:59 3 Q. With that qualification, do you remember saying that

14:09:01 4 President Obama had, quote, chosen the agenda of Planned

14:09:03 5 Parenthood over caring for the poor?

14:09:04 6 A. Yes.

14:09:07 7 Q. And you've advocated in the past barring Planned Parenthood

14:09:10 8 from providing Medicaid care because of its abortion services and

14:09:15 9 abortion rights advocacy, correct?

14:09:16 10 A. What I have said in the past is that --

14:09:19 11 Q. Please, "Yes" or "No"?

14:09:20 12 A. Sure. Can you --

14:09:23 13 Q. Yeah. Have you advocated barring Planned Parenthood from

14:09:27 14 providing Medicaid care because of its abortion services and

14:09:31 15 abortion rights advocacy?

14:09:33 16 A. Yes.

14:09:34 17 Q. Okay. In fact, when the Seventh Circuit told Indiana that

14:09:42 18 it could not de-fund Planned Parenthood, didn't you call that

14:09:45 19 decision deplorable?

14:09:47 20 A. What I was referring to in that, it was not the decision --

14:09:50 21 Q. Please, "Yes" or "No"?

14:09:51 22 A. Could I -- I don't think it was the decision was deplorable.

14:09:54 23 If it would help me remember if you showed me the language you're

14:09:57 24 referring to.

14:09:58 25 Q. Sure. Plaintiffs' Exhibit 241, please. So this one's easy

14:10:24 1 because it's one page.

14:10:25 2 A. I could see it.

14:10:27 3 Q. If you look towards the bottom, you will see you're quoted.

14:10:29 4 And does that refresh your recollection that you were calling the
14:10:33 5 decision or the outcome of that case deplorable?

14:10:36 6 A. The outcome, not the decision of the case or the action of
14:10:39 7 the court. The outcome --

14:10:41 8 Q. Okay --

14:10:41 9 A. -- was --

14:10:42 10 Q. -- that's what I asked.

14:10:42 11 A. -- yes. The outcome.

14:10:44 12 Q. That's what I asked.

14:10:45 13 And did you say that the outcome was, quote, a grim
14:10:48 14 reminder of the Obama administration's unswerving commitment to
14:10:51 15 Planned Parenthood, the nation's largest abortion provider?

14:10:54 16 A. Yeah. What I was referring to --

14:10:55 17 Q. I didn't ask for --

14:10:56 18 A. Sorry. What's your question?

14:10:57 19 Q. I'm asking, does this reflect your recollection that you did
14:11:01 20 say that?

14:11:01 21 A. Yeah. I would say that that --

14:11:02 22 Q. I'm not asking for explanation of that. I'm just asking if
14:11:05 23 you recall saying that.

14:11:07 24 A. Do I recall saying what?

14:11:09 25 Q. Saying that the outcome in that case was a grim reminder of

14:11:13 1 the Obama administration's unswerving commitment to Planned
14:11:17 2 Parenthood, the nation's largest abortion provider.

14:11:20 3 A. That quote doesn't reflect what --

14:11:21 4 Q. Professor Snead, I'm not asking --

14:11:23 5 A. -- I'm sorry. I'm not understanding what you're asking me.

14:11:25 6 Q. Okay. I'm not asking for your explanation of what you meant
14:11:27 7 when you said that.

14:11:28 8 A. Uh-huh.

14:11:28 9 Q. I'm asking if you remember saying that, now that you see the
14:11:30 10 article that quotes you saying that.

14:11:32 11 A. I don't believe that I said that in response -- in modifying
14:11:35 12 the word "outcome." But it's clearly in -- the reporter wrote
14:11:39 13 that down as the outcome was a reminder. So that is -- there is
14:11:44 14 a document that has that in it. But I believe that the reporter
14:11:46 15 misunderstood what I was saying. Although that itself is --
14:11:49 16 again, the statement itself should be unobjectionable, seems to
14:11:54 17 me.

14:11:54 18 Q. And you believe that Planned Parenthood organizations -- and
14:11:57 19 you believed that Planned Parenthood organizations should lose
14:12:00 20 all federal funding before the CMP videos came out, correct?

14:12:06 21 A. All federal funding?

14:12:08 22 Q. Yes.

14:12:10 23 A. That's an overbroad question. If Planned Parenthood were
14:12:15 24 not the nation's largest abortion provider, there would be -- I
14:12:18 25 would have no concerns whatsoever about them receiving federal

14:12:21 1 funding.

14:12:22 2 Q. Okay. So this article that we just looked at was from 2013,

14:12:25 3 before the CMP videos came out.

14:12:27 4 A. Right. Yes.

14:12:28 5 Q. And you were criticizing the outcome, not the court.

14:12:31 6 A. Yes.

14:12:32 7 Q. For not allowing the state to bar Planned Parenthood from

14:12:36 8 Medicaid, correct?

14:12:36 9 A. The state law -- that's not fair. The state law in that

14:12:39 10 case was not -- banned all abortion providers in the state of

14:12:42 11 Indiana from receiving state taxpayer funding through Medicaid.

14:12:44 12 Q. Okay. So you were advocating in your comments to the press

14:12:48 13 that states should be allowed to bar all abortion providers from

14:12:51 14 Medicaid, correct?

14:12:52 15 A. Yes. That is correct.

14:12:53 16 Q. Okay. And you believe that abortion should be illegal,

14:12:59 17 correct?

14:13:01 18 A. I wouldn't -- I think that's an overbroad statement. I

14:13:05 19 think that the law should recognize and protect all living human

14:13:09 20 beings. There are various stages of them --

14:13:12 21 Q. I'm sorry. I'm going to cut you off because you're not

14:13:14 22 responding to my question. If it's not correct, you can just say

14:13:16 23 no, and then, I will clarify.

14:13:20 24 But I ask you not to --

14:13:22 25 A. Sure.

14:13:22 1 Q. -- answer a different question.

14:13:23 2 A. Sure. I apologize.

14:13:24 3 So the question you're asking is, do I believe abortion
14:13:27 4 should be illegal, I think the answer is, I think it depends.

14:13:30 5 It's more -- it's complicated -- it's a complicated question. It
14:13:33 6 depends.

14:13:33 7 Q. Under what circumstances do you believe it should be legally
14:13:37 8 permissible?

14:13:37 9 A. I believe that -- well, I believe that abortion should be
14:13:41 10 treated in the same way any other kind of conflict of interest
14:13:45 11 between two human beings are adjudicated nor are there instances
14:13:50 12 in which --

14:13:50 13 Q. I'd like a concise answer that's not theoretical but
14:13:53 14 that's --

14:13:53 15 A. It's a complicated question. It's an extraordinarily
14:13:56 16 complicated question. It doesn't permit a one-sentence answer.
14:13:58 17 You're saying under what circumstances should abortion be legal?

14:14:01 18 Q. Can you identify a particular circumstances where abortion
14:14:03 19 should be legal?

14:14:05 20 MR. STEPHENS: She asked the question. Can he answer
14:14:07 21 the question before she asks another question?

14:14:11 22 MS. CLAPMAN: He's not answering the question and
14:14:12 23 that's my concern.

14:14:13 24 THE COURT: I'll make that determination.

14:14:15 25 MR. STEPHENS: She asked him when an abortion could

14:14:17 1 be --

14:14:17 2 THE COURT: She asked him and he hadn't gotten around
14:14:21 3 to answering that part of it. Can you advise the lady when you
14:14:26 4 think abortion is illegal?

14:14:29 5 THE WITNESS: When abortion should be legal or illegal
14:14:33 6 is the question. I apologize.

14:14:34 7 Q. (BY MS. CLAPMAN) Legally permitted.

14:14:35 8 A. Legally permitted, I think abortion should be legally
14:14:38 9 permitted in those circumstances that comport with other
14:14:40 10 principles of justification in the law for taking human life.

14:14:44 11 Q. Okay. Can you identify any concrete situations where that
14:14:47 12 would apply --

14:14:47 13 A. Sure. An instance in which a woman's life is at issue is an
14:14:52 14 instance in which that could possibly -- but, again, it's a
14:14:54 15 highly complex question involving a variety of factors. It's
14:14:57 16 hard to answer in the abstract.

14:14:58 17 Q. Okay. Any other concrete situations other than a woman's
14:15:01 18 life being in danger that you can see it being legally
14:15:04 19 permissible?

14:15:04 20 A. Well, I would have to think about it more. I mean -- again,
14:15:07 21 it's like when should it be legal to kill another person is your
14:15:09 22 question.

14:15:10 23 Q. Okay. So --

14:15:10 24 A. And there are about a million different answers to that
14:15:13 25 question.

14:15:13 1 Q. Okay. So as you're sitting here now, other than a situation
14:15:15 2 where a woman's life is in danger, you cannot identify a concrete
14:15:18 3 situation where you think abortion should be legally permissible.
14:15:22 4 And I'd like a "Yes" or "No" answer, please.

14:15:24 5 A. I don't under -- rephrase the question, please.

14:15:26 6 Q. Sure. As you're sitting here now, you cannot identify a
14:15:29 7 concrete situation other than where the woman's life is at risk
14:15:34 8 where it should be legally permissible for her to have an
14:15:36 9 abortion.

14:15:37 10 A. Could you also --

14:15:38 11 MR. STEPHENS: Judge, we object. That's asked and
14:15:40 12 answered. She asked him for a situation and he gave --

14:15:44 13 A. I think you're going to have -- I'm sorry. Sorry, Judge.

14:15:47 14 MS. CLAPMAN: He gave one answer and I'm asking if
14:15:49 15 there are any other situations. That hasn't been answered.

14:15:51 16 MR. STEPHENS: That's a different question.

14:15:56 17 MS. CLAPMAN: So it's not asked and answered.

14:15:58 18 THE COURT: I didn't sustain the objection. He
14:16:01 19 withdrew the objection. Ask the question again.

14:16:03 20 Q. (BY MS. CLAPMAN) Okay. So you've identified one concrete
14:16:06 21 situation.

14:16:06 22 A. Yeah.

14:16:07 23 Q. Where you believe that abortion should be legally permitted,
14:16:10 24 where the woman's life is at stake. Sitting here today -- and I
14:16:13 25 realize you might want to think about it some more, but sitting

14:16:17 1 here today, can you identify any other concrete situation where
14:16:19 2 you think abortion should be legally permitted?

14:16:22 3 A. What do you mean by abortion? Because that's actually a
14:16:27 4 complicated and vexed issue and -- in both medical practice and
14:16:28 5 in bioethics and in the law, for that matter.

14:16:30 6 Q. Okay. I mean termination of a pregnancy by a doctor or
14:16:37 7 medical professional.

14:16:38 8 A. Termination of a pregnancy, there are lots of circumstances
14:16:41 9 in which termination of a pregnancy would be permissible or
14:16:46 10 legal, or should be legal or permissible. If by preg -- you mean
14:16:52 11 by pregnancy, gestation of a human organism in utero?

14:16:58 12 THE COURT: Let's ask it this way.

14:17:00 13 THE WITNESS: Yeah.

14:17:01 14 THE COURT: Do you believe that a choice of abortion is
14:17:22 15 a constitutional right?

14:17:24 16 THE WITNESS: The Supreme Court certainly has held
14:17:26 17 that. Absolutely, sir.

14:17:27 18 THE COURT: Okay. My question is, do you believe it?

14:17:31 19 THE WITNESS: Do I believe that there is --

14:17:32 20 THE COURT: Not what the Supreme Court says. It's
14:17:35 21 binding on you, it's binding on me. I have my own beliefs. How
14:17:38 22 about you?

14:17:39 23 THE WITNESS: Oh, are you asking me, does the
14:17:40 24 Constitution require or prevent the state from forbidding or
14:17:44 25 restricting abortion is what you're asking, Judge?

14:17:46 1 THE COURT: No.

14:17:48 2 THE WITNESS: I'm sorry. I'm not --

14:17:50 3 THE COURT: I'm through asking questions.

14:17:52 4 THE WITNESS: Not trying to be difficult.

14:17:53 5 THE COURT: That's all right. I have four sons, I'm

14:17:55 6 used to it.

14:17:56 7 Q. (BY MS. CLAPMAN) Okay. You've criticized the current U.S.

14:18:01 8 Supreme Court as ardently supporting maximal abortion rights,

14:18:05 9 correct?

14:18:06 10 A. What year was that? The current Supreme Court? Current as

14:18:09 11 of when?

14:18:10 12 Q. Current as in past two years.

14:18:14 13 A. I think that's fair.

14:18:16 14 Q. Okay. And I'm going to hand you Plaintiffs' Exhibit 242.

14:18:34 15 Actually, I'm going to hold off on handing it to you. Not

14:18:37 16 because I don't want to hand it to you yet.

14:18:42 17 Do you recall having called the U.S. Supreme Court's

14:18:44 18 recent Hellerstedt decision a, quote, devastating blow to the

14:18:50 19 inalienable dignity of unborn children and their mothers?

14:18:53 20 A. Yes. Absolutely.

14:18:54 21 Q. Do you recall having called that same decision a

14:18:57 22 breathtaking misappropriation of power?

14:19:00 23 A. Yes.

14:19:01 24 Q. Okay. You think that some forms of birth control should be

14:19:10 25 banned because they're really abortion, correct?

14:19:14 1 A. You have to be more specific.

14:19:16 2 Q. Okay. You think that emergency contraception is really
14:19:20 3 abortion, correct?

14:19:21 4 A. Which form of emergency contraception are you talking about?

14:19:25 5 Q. What's commonly known as the morning-after pill?

14:19:29 6 A. I actually don't know the mechanism of action of the
14:19:30 7 morning-after pill. I know that the Food and Drug Administration
14:19:33 8 has written in its own documentation that it might function by
14:19:38 9 inhibiting implantation, but I actually -- I don't know the
14:19:40 10 mechanism of actions. So I'm not confident about the
14:19:43 11 morning-after pill and its mechanism of action.

14:19:45 12 Q. Okay. Do you recall having referred to emergency
14:19:49 13 contraception as killing an unborn child?

14:19:52 14 MR. STEPHENS: Judge, objection. Relevance. This case
14:19:54 15 isn't about abortion being legal or illegal or the morning-after
14:19:58 16 pill. It's about fetal tissue research and the Inspector
14:20:03 17 General's decision to terminate Planned Parenthood from money.
14:20:05 18 This is going well past the scope of bias, if that's the intent.

14:20:11 19 THE COURT: This case is about whether the clinics and
14:20:18 20 Planned Parenthood did those things and justified the
14:20:25 21 termination. There's no question -- there's no point in, you
14:20:30 22 know, continuing to cross-examination. The witness has strong
14:20:34 23 feelings about things. You've got a lot of things, but you've
14:20:39 24 covered that in two questions.

14:20:42 25 MS. CLAPMAN: Okay. No further questions.

14:20:45 1 THE COURT: You're taking up your time. Redirect.

14:20:51 2 RE-DIRECT EXAMINATION

14:20:53 3 BY MR. STEPHENS:

14:20:53 4 Q. Professor Snead, do you consider yourself pro life?

14:20:55 5 A. Yes.

14:20:56 6 Q. Okay. And in light of your views regarding Planned
14:21:01 7 Parenthood and abortion, can you be objective in offering an
14:21:05 8 opinion in this case?

14:21:06 9 A. Yes, of course I can.

14:21:08 10 Q. Okay. And could you be objective in offering an opinion
14:21:12 11 about bioethics as they pertain to the issues of this case?

14:21:16 12 A. Of course.

14:21:16 13 Q. Okay. And why is that? Why can you do that?

14:21:18 14 A. Well, again, what I've been asked to do is not to opine on
14:21:22 15 the -- I understand that the question of abortion is a divided
14:21:27 16 question -- a question that divides the country and divides
14:21:29 17 people in this courtroom. And I understand that not everyone
14:21:31 18 agrees with me.

14:21:32 19 What I've been asked to do is not to talk about
14:21:34 20 abortion, but to talk about the application of ethical principles
14:21:37 21 that are codified in federal law, codified in federal regulations
14:21:41 22 and --

14:21:41 23 MS. CLAPMAN: I object to his answer as a narrative
14:21:43 24 form and not responsive to the question.

14:21:48 25 THE COURT: Ask another question.

14:21:50 1 Q. (BY MR. STEPHENS) Professor Snead, why do ethical issues
14:21:58 2 matter in this case?

14:22:00 3 A. The question, as I understand it, Judge, you just said
14:22:04 4 moments ago, is whether or not -- I mean, whether or not the
14:22:08 5 termination of the Medicaid contracts were legitimate or not, and
14:22:11 6 one of the grounds for termination is that the medical services
14:22:15 7 were provided in an unethical fashion following the Gee case, is
14:22:18 8 my understanding of what's going on.

14:22:20 9 MS. CLAPMAN: This is a narrative answer.

14:22:21 10 MR. STEPHENS: That's fine. Pass the witness.

14:22:25 11 THE COURT: Do you have any other questions?

14:22:27 12 MS. CLAPMAN: No.

14:22:28 13 THE COURT: May the witness be excused?

14:22:30 14 MR. STEPHENS: Yes.

14:22:31 15 THE COURT: You're excused.

14:22:34 16 THE WITNESS: Thank you, Judge.

14:23:08 17 THE COURT: Come up, please, ma'am.

14:23:10 18 (Witness sworn.)

14:23:32 19 THE COURT: Tell us your full name and spell your last
14:23:40 20 name.

14:23:40 21 THE WITNESS: My name is Leslie Kathleen French
14:23:46 22 Henneke, F-R-E-N-C-H, Henneke, H-E-N-N-E-K-E.

14:23:51 23 LESLIE K. FRENCH HENNEKE, called by the Defendant, duly sworn.

14:23:51 24 DIRECT EXAMINATION

14:23:51 25 BY MR. SWEETEN:

14:23:51 1 Q. Ms. Henneke, where do you work?

14:23:53 2 A. I work at the Health and Human Services Commission.

14:23:55 3 Q. And what is your position there?

14:23:56 4 A. I am the Associate Commissioner for the Health,
14:24:00 5 Developmental, and Independent Services Department.

14:24:01 6 Q. And how long have you been the associate commissioner there?

14:24:05 7 A. Since September 1st, 2015.

14:24:07 8 Q. Okay.

14:24:08 9 THE COURT: And, I'm sorry, I'm a little slow on
14:24:10 10 writing down. You're the associate commissioner of what?

14:24:13 11 THE WITNESS: It's a long title. Associate
14:24:15 12 Commissioner of Health, Developmental and Independent Services
14:24:21 13 Department.

14:24:22 14 THE COURT: Thank you.

14:24:23 15 Q. (BY MR. SWEETEN) And so, you're relatively new in that
14:24:25 16 position?

14:24:25 17 A. Yes.

14:24:26 18 Q. Okay. Part of that, though, have you worked on -- why don't
14:24:30 19 you tell us your experience with HHSC?

14:24:35 20 A. Sure. Before my current role, I was the Associate
14:24:38 21 Commissioner for the Women's Health Services Division at HHSC,
14:24:41 22 and prior to that, I was the Woman's Health Coordinator for HHSC,
14:24:46 23 beginning in October 2014.

14:24:48 24 Q. Okay.

14:24:49 25 THE COURT: And for another slow one, HSC is what?

14:24:52 1 THE WITNESS: Health And Human Services Commission. So
14:24:55 2 HHSC.
14:24:56 3 Q. (BY MR. SWEETEN) What are your current job duties as the
14:25:01 4 Associate Commissioner for Health, Development and Independent
14:25:04 5 Services department?
14:25:05 6 A. I manage 34 health programs that are not the Medicaid
14:25:07 7 program, and these programs serve clients between birth to end of
14:25:13 8 life. So, for example, some of the programs include the early
14:25:16 9 childhood intervention program, the women's health programs, as
14:25:20 10 well as the guardianship programs.
14:25:22 11 Q. Okay. Now, you mentioned women's health programs, correct?
14:25:25 12 A. Yes.
14:25:26 13 Q. And can you tell us a little bit about what are those?
14:25:30 14 A. The women's health programs within our department are three
14:25:33 15 programs, the Healthy Texas Women Program, the Family Planning
14:25:38 16 Program, and the Breast and Cervical Cancer Screening Program.
14:25:40 17 Q. Who is served by those programs?
14:25:43 18 A. All three programs serve women and some serve men of
14:25:47 19 reproductive age between the ages of 15 to 64 years old,
14:25:51 20 depending upon the program.
14:25:52 21 Q. Okay. Now, you've said something about the Healthy Texas
14:25:57 22 Women's Program. Did I get that right?
14:25:59 23 A. Yes.
14:25:59 24 Q. Okay. And can you tell us -- can you just describe what
14:26:02 25 that program is?

14:26:03 1 A. So the Healthy Texas Women Program is a program for women
14:26:07 2 ages 15 to 44 years old who are in need of women's health or
14:26:12 3 family planning services, and it serves women up to 200 percent
14:26:16 4 of the federal poverty level.

14:26:18 5 Q. Now, you said family planning program. Is that one of the
14:26:22 6 programs?

14:26:22 7 A. The family planning program is the second one in this health
14:26:25 8 program.

14:26:26 9 Q. Tell us about that program.

14:26:27 10 A. So that program serves men and women of reproductive age all
14:26:31 11 the way up to age 64 years old, and they are served up to 250
14:26:34 12 percent of federal poverty level.

14:26:37 13 Q. Okay. Now, do you sometimes -- at HHSC, do you sometimes
14:26:41 14 work with HHSC management that oversees Texas Medicaid?

14:26:44 15 A. Yes. I am one of four associate commissioners and my
14:26:48 16 counterpart is the Medicaid director, so we work very closely
14:26:52 17 together on many programs.

14:26:54 18 Q. And what is her name?

14:26:55 19 A. Jami Snyder.

14:26:56 20 Q. Okay. Can you just generally tell us the array of family
14:27:00 21 planning services available to Texas women under the Medicaid
14:27:02 22 program versus your program?

14:27:04 23 A. They are very similar. We see women's health and family
14:27:08 24 planning as being able to serve women in the reproductive age
14:27:11 25 lifespan. So making sure that women have annual exams, pelvic

14:27:17 1 exams, family planning services, such as contraceptive, birth
14:27:21 2 control, screenings for sexually transmitted infections, that
14:27:25 3 screening treatment for those, as well as breast and cervical
14:27:29 4 cancer screenings and diagnostic tests.

14:27:33 5 We also do mammograms as well as immunizations and
14:27:37 6 cervical dysplasia treatment.

14:27:39 7 Q. Now, if there's a patient you're eligible for Medicaid, are
14:27:42 8 you eligible for the Texas Women's Program?

14:27:44 9 A. Yes. You are able to be eligible for both.

14:27:49 10 Q. Now, are you familiar with the services that are provided by
14:27:53 11 Planned Parenthood?

14:27:54 12 A. Yes.

14:27:55 13 Q. Okay. And how do their services compare or differ from
14:28:00 14 those provided under the Texas program?

14:28:02 15 A. They're the same women's health program services and family
14:28:07 16 planning services, except the Healthy Texas Women program also
14:28:09 17 provides some primary care benefits that we've seen impact
14:28:13 18 reproductive health, such as the screening, diagnosis and
14:28:17 19 treatment for hypertension, cholesterol and Diabetes.

14:28:20 20 Q. Okay. Are there other Medicaid providers who provide the
14:28:22 21 same services to Texas women as the services provided by Planned
14:28:26 22 Parenthood under Medicaid, to your knowledge?

14:28:27 23 A. Yes.

14:28:28 24 Q. Okay. If Planned Parenthood were no longer a Texas Medicaid
14:28:33 25 provider, how would that affect Texas women's access to family

14:28:36 1 planning services?

14:28:39 2 A. We would not see it -- a very difference and the reason why
14:28:42 3 is because Medicaid is -- everyone is -- in our programs is --
14:28:46 4 also must be a Medicaid provider. So you have the Medicaid
14:28:49 5 women's health providers here and you have the general
14:28:51 6 revenue-funded women's health programs, they're a smaller niche.
14:28:55 7 But you have over 5,342 women's health providers throughout Texas
14:29:00 8 who are able and willing to serve any patients who may not be
14:29:03 9 able to get access and services elsewhere.

14:29:05 10 Q. Okay. Let me ask you about the last two years. Has there
14:29:08 11 been an increase in enrolled providers during that time?

14:29:11 12 A. Yes. We had a unique experience over the last year because
14:29:15 13 of the mandatory requirement that all providers reenroll in
14:29:20 14 Medicaid, and because of that mandatory re-enrollment, HHSC
14:29:25 15 through all of our programs really did an outreach campaign for
14:29:28 16 all the providers across the state to make sure that they were
14:29:31 17 noticed about the re-enrollment. So specifically about the
14:29:34 18 women's healthcare programs, we worked with doctors and providers
14:29:38 19 and --

14:29:38 20 THE COURT: Little slower. The court reporter is
14:29:41 21 starting to steam here.

14:29:44 22 A. Sorry. So we worked very closely with providers across
14:29:48 23 Texas to come and join Medicaid, as well as the women's health
14:29:52 24 programs.

14:29:53 25 Q. (BY MR. SWEETEN) Okay. Has there been a change in the types

14:29:55 1 of providers that are available since 2011?

14:29:58 2 A. Yes. Not only have we seen a tripling of the amount of
14:30:03 3 providers in the program, so in 2010, we had 1,647 providers.
14:30:08 4 And today, we have 5,342. But we've also seen an increase in the
14:30:13 5 type of provider. Because a lot of our providers have said, you
14:30:16 6 know, we really want to be able to serve the woman holistically
14:30:20 7 and being able to address issues that impact her reproductive
14:30:22 8 health.

14:30:23 9 So with chronic diseases, they play a major role in
14:30:26 10 reproductive health, and so, we've accrued a lot more primary
14:30:29 11 care, internal doctors, as well as family doctors to the
14:30:32 12 programs.

14:30:33 13 Q. Okay. Now, I want to ask you some questions about some
14:30:36 14 numbers. First of all, collectively, how many women were served
14:30:39 15 by the women's health programs in Texas last year?

14:30:42 16 A. With the three programs, we've served approximately 363,000
14:30:46 17 women.

14:30:46 18 Q. Okay. And I also want to ask you, how much was spent by the
14:30:52 19 state of Texas on these programs last year?

14:30:54 20 A. On just those -- the general revenue programs, it was \$210
14:30:59 21 million last year.

14:31:00 22 Q. Okay. Now, with respect to women's health providers in the
14:31:05 23 areas of Planned Parenthood Gulf Coast, do you have any knowledge
14:31:09 24 about how many providers are within a five-mile radius of that
14:31:13 25 facility?

14:31:15 1 A. We've looked at some of them. If you go to
14:31:19 2 healthytexaswomen.org, you can see an online provider lookup
14:31:22 3 which it can actually pinpoint providers in a very -- either a
14:31:25 4 five-mile, 10-mile or 20-mile radius. And so, these are Medicaid
14:31:29 5 providers. All of them have to be Medicaid providers to be on
14:31:32 6 this online provider lookup. So www.healthytexaswomen.org.

14:31:37 7 And specifically with respect to a Planned Parenthood
14:31:40 8 clinic in the Houston area, we know that there's 357 providers in
14:31:45 9 a five-mile radius of the Houston clinic.

14:31:47 10 Q. Okay. Did you also look up the number of providers in a
14:31:52 11 five-mile radius of the PPST facility, Planned Parenthood South
14:32:00 12 Texas facility?

14:32:00 13 A. South Texas.

14:32:03 14 Q. Yes. Sorry. Planned Parenthood San Antonio? Yeah. San
14:32:08 15 Antonio center.

14:32:09 16 A. I think there were 62 in that area.

14:32:11 17 Q. Okay. And then, did you also look up how many providers
14:32:15 18 were within a five-mile radius of the Planned Parenthood Greater
14:32:18 19 Texas facility?

14:32:19 20 A. It was approximately around 50 providers in that area, too.

14:32:23 21 Q. Okay. Thank you. Pass the witness.

14:32:35 22 CROSS-EXAMINATION

14:32:41 23 BY MS. RATAKONDA:

14:32:41 24 Q. Good afternoon, Ms. French.

14:32:44 25 A. Hi.

14:32:45 1 Q. So you testified about certain Texas programs that provide
14:32:49 2 coverage for family planning service, correct?

14:32:51 3 A. Correct.

14:32:53 4 Q. Do you agree that a patient who is enrolled in Medicaid is
14:32:56 5 ineligible for the Texas women's health program to also be
14:33:00 6 enrolled in that program at the same time?

14:33:02 7 A. They're screened for whichever program is most appropriate
14:33:05 8 for them.

14:33:06 9 Q. I'm sorry. Can you --

14:33:07 10 A. They're screened. There's an application process, and so,
14:33:10 11 they're screened for whichever program. So --

14:33:12 12 Q. So can they be enrolled in both programs at the same time?

14:33:15 13 A. They can't be enrolled in both programs. Correct.

14:33:18 14 Q. Okay. Thank you.

14:33:19 15 And, in fact, you have policies in place to make sure
14:33:21 16 that patients are not enrolled in both programs at the same time,
14:33:24 17 right?

14:33:24 18 A. Correct, because --

14:33:25 19 Q. Okay. And --

14:33:26 20 A. -- people can go in and out of the programs based on their
14:33:29 21 life circumstances. We want to make sure it's encompassing so
14:33:32 22 that you're able to be qualified for one or both.

14:33:34 23 Q. Okay. Thank you.

14:33:35 24 And so, these other -- this other program that you
14:33:40 25 mentioned, it's actually not relevant to a Medicaid patient's

14:33:44 1 ability to access family planning services, correct? Because if
14:33:47 2 they're in the Medicaid program, they can't also be in the Texas
14:33:49 3 women's health program; is that correct?

14:33:51 4 A. It's not completely accurate because if you're in the
14:33:55 5 pregnant women's Medicaid program, you actually can be enrolled
14:33:58 6 in Healthy Texas Women program.

14:34:00 7 Q. If you're not in that specific --

14:34:02 8 MR. SWEETEN: Your Honor, if the witness could just
14:34:04 9 finish her answer. I think she was still completing it.

14:34:07 10 THE COURT: Let her finish the answer.

14:34:10 11 MS. RATAKONDA: Sure. Go ahead.

14:34:10 12 THE COURT: Ma'am, you just answer the question.

14:34:12 13 Q. (BY MS. RATAKONDA) So except for the women who are
14:34:16 14 specifically in the pregnant women program, except for those
14:34:20 15 women, women who are in the Texas women's health program can't be
14:34:25 16 in the Medicaid program, correct?

14:34:27 17 A. They can't be in Medicaid, but they could be in the family
14:34:29 18 planning program.

14:34:29 19 Q. Okay. Wouldn't you agree that there are several steps that
14:34:33 20 a patient has to take in order to enroll in a different publicly
14:34:36 21 funded health program?

14:34:38 22 A. No, because it depends on which program you're in. So if
14:34:42 23 you're in Healthy Texas Women there -- you can apply online. So
14:34:46 24 there's a process to apply online. But if you are in the family
14:34:49 25 planning program, you can also show up to the doctor's office and

14:34:51 1 be served at that point in time. So there's a different

14:34:54 2 eligibility system for the family planning program.

14:34:57 3 Q. But you have to navigate this eligibility system, correct?

14:35:00 4 A. Not for family planning. No.

14:35:03 5 Q. Didn't you just say that you have to go through certain

14:35:06 6 steps to --

14:35:06 7 A. For Healthy Texas Women, you do and for -- same with

14:35:09 8 Medicaid. So the same application used for Healthy Texas Women

14:35:13 9 is the same application you would use for the Medicaid program.

14:35:15 10 Q. So let's stick with the Healthy Texas Women's program. So

14:35:21 11 the patient has to be screened in some way to determine

14:35:23 12 eligibility for this program, correct?

14:35:25 13 A. Through the application process, yes.

14:35:27 14 Q. Okay. And if she wants to apply to this program, she would

14:35:30 15 have to terminate her enrollment in the Medicaid program,

14:35:33 16 correct?

14:35:34 17 A. She would not be -- she's always screened for Medicaid first

14:35:37 18 before being placed into the Healthy Texas Women.

14:35:40 19 Q. Okay. And do patients routinely switch between Texas'

14:35:44 20 publicly funded health programs?

14:35:47 21 A. Yes. We've seen that.

14:35:49 22 Q. Would you agree that there's a shortage of Medicaid

14:35:52 23 providers in Texas?

14:35:53 24 A. No.

14:35:54 25 Q. Would you agree that there are certain regions of Texas for

14:35:57 1 which there is a shortage of Medicaid providers?

14:35:59 2 A. No.

14:36:00 3 Q. Would you agree that there's a shortage of Medicaid
14:36:03 4 providers who are willing to accept new patients?

14:36:07 5 A. No.

14:36:09 6 Q. Do you know how many Texas Medicaid providers are willing to
14:36:13 7 accept new patients in terms of percentage of Medicaid providers?

14:36:16 8 A. I can't speak to the Medicaid, but I can tell you for our
14:36:19 9 programs that there's a requirement they see new patients. And
14:36:22 10 so, that's part of being enrolled in our program that we ask all
14:36:25 11 doctors to see patients on a routine basis, and so, we require
14:36:29 12 them to see new patients.

14:36:31 13 Q. But you can't speak to the Medicaid program.

14:36:33 14 A. No. That's not my expertise.

14:36:36 15 Q. So you don't know how many Texas Medicaid providers are
14:36:39 16 willing to see new patients?

14:36:41 17 A. Correct.

14:36:41 18 Q. Okay. Does Medicaid -- to your knowledge, does Medicaid
14:36:46 19 reimburse providers for the total cost of the medical services
14:36:49 20 they provide?

14:36:52 21 A. The reimbursement structure's very similar to the other
14:36:55 22 women's health programs, and so, yes, you're able to bill for the
14:36:59 23 services you provide.

14:37:00 24 Q. And are providers reimbursed for the total cost of all of
14:37:05 25 the services that they provide?

14:37:07 1 A. I think it would depend. You'd have to ask providers about
14:37:10 2 that question. But the providers that we've discussed, that
14:37:13 3 we've talked to and we have frequent dialogues with and that
14:37:17 4 we've designed programs so they can be made whole to see a
14:37:20 5 client, they have been -- said they said that they're very
14:37:23 6 pleased with how it's being run and how they're able to be
14:37:26 7 reimbursed for all the services they're providing.

14:37:28 8 Q. Okay. Can you be enrolled as a -- so you spoke about being
14:37:34 9 enrolled as a Medicaid provider. Can you be enrolled as a
14:37:36 10 Medicaid provider and see no Medicaid patients? Is that a
14:37:39 11 possibility?

14:37:41 12 A. Not to my knowledge, no, because we encourage everybody to
14:37:45 13 see new patients in the Medicaid program if you're a Medicaid
14:37:47 14 provider.

14:37:48 15 Q. So you encourage everyone to see patients?

14:37:50 16 A. Uh-huh.

14:37:51 17 Q. But is there any enforcement mechanism to that?

14:37:54 18 A. There's no enforcement of a number of clients you have to
14:37:58 19 see, but if you're enrolled in Medicaid, especially since we just
14:38:00 20 went through Medicaid enrollment, everybody is seeing patients.

14:38:04 21 Q. So every single Medicaid provider who's enrolled is seeing
14:38:08 22 Medicaid patients. That's your testimony?

14:38:11 23 A. In the Healthy Texas Woman and family planning program, yes.

14:38:15 24 Q. What about Medicaid generally?

14:38:17 25 A. I can't speak to all of Medicaid. I can just speak to the

14:38:20 1 Medicaid providers who are also enrolled in our programs.

14:38:24 2 Q. Okay. So you're not familiar with other Medicaid providers,
14:38:28 3 whether they are required to see Medicaid patients?

14:38:30 4 A. I believe they are, but I will refer that to others to
14:38:36 5 discuss. So I can only talk about if you are a provider in our
14:38:40 6 programs, you are a Medicaid provider and you are also required
14:38:44 7 to see Medicaid providers -- patients.

14:38:49 8 Q. But you're not sure.

14:38:51 9 A. I cannot speak to the whole Medicaid system. No.

14:38:53 10 Q. Okay. So did anyone ask you to analyze whether there would
14:38:59 11 be other providers available to see Planned Parenthood's Medicaid
14:39:02 12 patients if Planned Parenthood were to be terminated from the
14:39:05 13 Medicaid program?

14:39:06 14 A. We're always looking at how we can better serve clients, so
14:39:10 15 we're always looking at ways to improve.

14:39:12 16 Q. So did you do an analysis by region of the impact of
14:39:15 17 termination on Medicaid patients?

14:39:17 18 A. I only did -- we were -- I was asked to look into the
14:39:21 19 Healthy Texas Women of where the several locations that were
14:39:24 20 mentioned earlier, if there were providers in Healthy Texas Women
14:39:29 21 and Medicaid in those areas. So that was the numbers I gave
14:39:31 22 earlier.

14:39:32 23 Q. So there were only certain regions that you looked at?

14:39:34 24 A. Correct.

14:39:34 25 Q. Okay. So you're not sure of the impact on termination in

14:39:39 1 other regions in the state?

14:39:40 2 A. We could pull up healthytexaswomen.com right now, and we
14:39:44 3 could go point-by-point for all those places. But I know that we
14:39:48 4 have done a tremendous amount of work recruiting providers to the
14:39:50 5 programs over the last year. And so, we know in Healthy Texas
14:39:53 6 Women and in family planning, we have statewide access, which has
14:39:57 7 actually tripled over the last four years.

14:39:59 8 Q. Did you do any sort of study or analysis to see if other
14:40:03 9 non-Planned Parenthood providers have the capacity to see more
14:40:06 10 patients across the state?

14:40:07 11 A. We're always working with providers -- in the family
14:40:10 12 planning program, we have contracts with providers, and so, we do
14:40:12 13 know that they always have more capacity to take on new patients.

14:40:16 14 Q. And do you know if they actually take on new patients or are
14:40:19 15 willing to take on new patients?

14:40:21 16 A. Based on our calls with them, yes.

14:40:23 17 Q. Based on calls with how many of these patients -- providers?

14:40:26 18 A. We have 53 contractors that represent 201 clinics in the
14:40:30 19 family planning program, so those providers are able to take on
14:40:33 20 new patients.

14:40:34 21 Q. And all of these providers have testified or stated that
14:40:37 22 they would take on new patients and are taking on new patients.

14:40:41 23 A. Yes.

14:40:41 24 Q. Every provider.

14:40:42 25 A. Yes.

14:40:42 1 Q. That you've called.

14:40:43 2 A. Yes.

14:40:46 3 Q. Do you have any comparison of what services are available at
14:40:51 4 other non-Planned Parenthood Medicaid providers as compared to
14:40:54 5 the services currently available at Planned Parenthood clinics?

14:41:00 6 A. Most of the Healthy Texas Woman as well as family planning
14:41:04 7 providers who are Medicaid providers can also see primary care
14:41:07 8 issues as well as the family planning services. So we have other
14:41:11 9 doctors, internal medicine doctors, family doctors who can also
14:41:15 10 treat the other reproductive health issues that may present.

14:41:18 11 Q. Are you familiar with the full range of services provided by
14:41:22 12 Planned Parenthood providers?

14:41:23 13 A. Yes.

14:41:24 14 Q. And do you know if all of these other Medicaid providers
14:41:27 15 that you've been referring to, if they offer the same full range
14:41:31 16 of services to patients?

14:41:33 17 A. For women's health and family planning, they do.

14:41:36 18 Q. The full -- including the same-day, long-acting reversible
14:41:39 19 contraception?

14:41:40 20 A. Yes.

14:41:41 21 Q. Every provider offers that?

14:41:42 22 A. We've had a big issue with increasing access for long-acting
14:41:45 23 reversible contraceptive. So yes, that's been the commitment of
14:41:48 24 our providers to make those available to patients.

14:41:51 25 Q. And when you say commitment, do you mean that these

14:41:55 1 providers are actually making these LARCs available to patients

14:42:02 2 -- are the same-day LARCs available to patients?

14:42:04 3 A. For --

14:42:04 4 Q. Are the same-day LARCs available to patients?

14:42:05 5 A. Same-day LARCs, whether -- sometimes it doesn't work for a

14:42:06 6 patient to have it on the same day, so they may want to come

14:42:09 7 back. But we changed our Medicaid billing system over the last

14:42:13 8 year, and we launched the new LARC provider toolkit, which

14:42:16 9 actually provides a toolkit for patients and doctors to know how

14:42:19 10 and when is the best use of a LARC. And so, we've seen a great

14:42:23 11 return and a lot of encouragement from clients who are real

14:42:26 12 excited about having LARCs.

14:42:28 13 So with our contracts with our providers that we

14:42:32 14 require that LARCs are available for patients.

14:42:35 15 Q. So would you agree that if -- I'm sorry. To stay on what

14:42:40 16 you said for a second, so how do you know that every single

14:42:47 17 provider -- Medicaid provider is -- has LARCs available, same-day

14:42:53 18 LARCs available for patients?

14:42:54 19 A. Well, again, I can't testify to the whole Medicaid. I can

14:42:58 20 just talk about the Medicaid providers who are also enrolled in

14:43:02 21 Healthy Texas Women and women's health -- family planning program

14:43:05 22 and they do. They've made a commitment, they've signed up for

14:43:07 23 the programs, they want to participate, and part of that is

14:43:09 24 offering the array of contraception. And LARC is, what we've

14:43:12 25 seen, the best scientific evidence for providing great birth

14:43:16 1 control for women. So it's been a big positive push that -- not
14:43:21 2 push, but it's been a big positive, you know, game-changer,
14:43:24 3 really, for women's health to have LARCs in the system.
14:43:27 4 Q. And so, you can only speak to a small percentage of Medicaid
14:43:31 5 providers. You said you can't speak to all Medicaid providers,
14:43:34 6 correct?
14:43:34 7 A. Just the ones that overlap the 5,342.
14:43:38 8 Q. Okay. Would you agree that if women can't be seen as
14:43:41 9 quickly for family planning services, there may be more
14:43:44 10 unintended pregnancies?
14:43:47 11 A. Maybe.
14:43:49 12 Q. Would you agree that if women --
14:43:51 13 MR. SWEETEN: Your Honor, foundation and it's outside
14:43:53 14 the scope of the direct.
14:43:58 15 THE COURT: I'll sustain the objection.
14:44:02 16 Q. (BY MS. RATAKONDA) What qualifies a woman for Medicaid?
14:44:09 17 A. So there's an application process. Yourtexasbenefits.com
14:44:13 18 where a woman fills out an application. They have to be a
14:44:16 19 certain age, over 18 or older, and they have to be up to 185
14:44:22 20 percent of the federal poverty level. And then, through that
14:44:25 21 application process, there's documentation that's required, you
14:44:28 22 know, whether you're an eligible citizen or immigrant for
14:44:32 23 services.
14:44:33 24 Q. And aside from the federal poverty level figure that you
14:44:38 25 just mentioned, do these patients also have to have an additional

14:44:42 1 qualifying factor? Are you familiar with that?

14:44:52 2 A. I don't understand the question.

14:44:54 3 Q. So you mentioned that a woman in order to qualify for

14:44:57 4 Medicaid, what was the federal poverty level?

14:45:01 5 A. 185 percent.

14:45:03 6 Q. Okay. And does she also have to have an additional

14:45:07 7 qualifying factor? There's certain factors that she has to meet?

14:45:11 8 A. Well, there's income verification, there's residency,

14:45:17 9 status. There's multiple different qualifications, and then, you

14:45:20 10 have to have the documentation to prove it. So if, for some

14:45:23 11 reason, a woman is not able to be enrolled through the Medicaid

14:45:26 12 system, they would be able to receive family planning services

14:45:28 13 through the family planning program because a citizenship is not

14:45:32 14 an issue for that program. And, also, the federal poverty level

14:45:36 15 is up to 250 percent and not 185. So it actually encompasses

14:45:41 16 more people who could qualify for that program.

14:45:44 17 Q. So at 185 percent of the federal poverty level, these are

14:45:47 18 women living in poverty, correct?

14:45:49 19 A. Yes.

14:45:51 20 Q. And so, they may -- these women may have multiple jobs --

14:45:55 21 A. Yes.

14:45:56 22 Q. -- correct? And these women may be single parents.

14:46:00 23 MR. SWEETEN: Objection, your Honor. She's asking --

14:46:02 24 she's outside the scope. She's talking about Medicaid. We've

14:46:05 25 got Jami Snyder, her counterpart, who will be here to testify

14:46:08 1 about those specific granular issues. She's outside the scope.

14:46:12 2 THE COURT: She did give direct testimony with regard

14:46:14 3 to the availability, and she's entitled to ask these questions.

14:46:19 4 Q. (BY MS. RATAKONDA) I'm sorry. I don't know if you answered

14:46:23 5 my last question, but some of these women may be single parents?

14:46:27 6 A. Yes. And I'll say the same -- but the same for our

14:46:30 7 programs, as well. For Healthy Texas Women and family planning,

14:46:33 8 you know, the average client is a 27-year-old single mom with two

14:46:35 9 kids who's working more than one job, and so, that's the whole

14:46:39 10 reason why the legislature and the government invested in Healthy

14:46:42 11 Texas Women family planning is to make sure that all women have

14:46:45 12 access to these services.

14:46:47 13 So whether you qualify for Medicaid or not, you can

14:46:49 14 still qualify in Healthy Texas Women and family planning to

14:46:54 15 receive these services.

14:46:55 16 Q. Would you agree that for these women who you had just

14:46:59 17 described as living in poverty, may have multiple jobs, may be

14:47:01 18 single parents, for these women, same-day access to services is

14:47:04 19 better than having to wait for a provider for an additional

14:47:06 20 appointment?

14:47:10 21 A. We would all love same-day access. And so, with the family

14:47:13 22 planning program, that is available. And Healthy Texas Women, we

14:47:17 23 are, you know, helping, encouraging women to apply and being able

14:47:21 24 to provide services as soon as possible.

14:47:24 25 Q. And would you agree that having evening or Saturday hours

14:47:27 1 makes it easier for these patients to obtain services?

14:47:30 2 A. Yes, and a lot of our clinics do.

14:47:32 3 Q. Do all of your Medicaid providers have these types of hours?

14:47:38 4 A. I can't speak to all of them, but I can tell you with the

14:47:40 5 Healthy Texas Women family planning, the majority of them do.

14:47:44 6 Q. Okay. And would you agree that having bilingual staff and

14:47:48 7 translator services available can be important for Medicaid

14:47:51 8 patients to access services?

14:47:52 9 A. Yes.

14:47:53 10 Q. And do all providers have these services available for

14:47:56 11 patients?

14:47:57 12 A. The majority of our providers do.

14:47:59 13 Q. But not all of them.

14:48:00 14 A. Again, I can't testify to all Medicaid providers.

14:48:04 15 Q. So you testified or you spoke about LARC previously. Is it

14:48:10 16 -- would you say it's an effective form of contraception?

14:48:13 17 A. It is the number-one most effective form of contraceptive.

14:48:17 18 Q. And wouldn't you agree that Medicaid providers who don't

14:48:21 19 specialize in family planning are less likely to have LARCs

14:48:26 20 onsite?

14:48:26 21 A. It would depend upon what type of practice we're discussing.

14:48:31 22 So a lot of providers actually are with groups and they actually

14:48:36 23 will provide -- even though they, themselves, are a single

14:48:38 24 provider, they actually team up with other providers to have

14:48:41 25 same-day LARC access on hand.

14:48:43 1 Q. So some of the providers who offer birth control through
14:48:46 2 Medicaid or reproductive healthcare, family planning may not be
14:48:52 3 their area of expertise, correct?

14:48:56 4 A. Correct. But most of the providers --

14:48:58 5 Q. So, for example, what -- some of these providers can be
14:49:02 6 primary care providers.

14:49:03 7 A. Yes, but because reproductive health is so intricately tied
14:49:08 8 now, especially with what we've seen with scientific advances in
14:49:11 9 the last ten years is that you can't treat one symptom without
14:49:14 10 treating another. So really looking at a woman holistically and
14:49:17 11 seeing that, you know, her reproductive health could really
14:49:19 12 impact, you know, her ability to have kids in the future, her
14:49:23 13 Diabetes, her hypertension could also play a factor into her
14:49:26 14 reproductive health.

14:49:27 15 And so, it's seeing everything we've actually seen as a
14:49:29 16 positive improvement to open up family planning providers to
14:49:36 17 include, you know, primary care, internalists, specialists.

14:49:39 18 Q. But you would agree that not all of these providers are
14:49:42 19 specialists in family planning care, correct?

14:49:45 20 A. Correct.

14:49:45 21 Q. Okay. So -- and isn't it true that for specialists who are
14:49:52 22 not experts or whose areas of expertise is not family planning,
14:49:57 23 doesn't it -- don't these providers not -- may not be as
14:50:02 24 experienced in providing contraceptive counseling? Could that be
14:50:06 25 possible?

14:50:07 1 MR. SWEETEN: Objection, your Honor. I think she's
14:50:09 2 asking a speculative question.

14:50:11 3 THE COURT: Possible is pretty speculative.

14:50:15 4 Q. (BY MS. RATAKONDA) So for family planning providers who are
14:50:17 5 not specialists -- or, I'm sorry, for Medicaid providers who are
14:50:20 6 not specialists in family planning care, do you think that they
14:50:25 7 offer -- or they're as experienced in contraceptive counseling as
14:50:29 8 specialists -- or as providers who are specialists in family
14:50:32 9 planning care?

14:50:33 10 MR. SWEETEN: Same objection, your Honor.

14:50:37 11 MS. RATAKONDA: I'm just asking about her knowledge,
14:50:39 12 your Honor.

14:50:39 13 THE COURT: You're just asking a lot of questions, but
14:50:41 14 I don't see how that applies into the direct. The direct was the
14:50:46 15 number of facilities that are available and that's what she's
14:50:56 16 testified to.

14:50:58 17 MS. RATAKONDA: I'm trying to get a sense, your Honor,
14:51:01 18 of how -- Planned Parenthood is a specialist in family planning
14:51:06 19 care. So I'm trying to get a sense of what other services are
14:51:09 20 available to Medicaid patients from providers who are not
14:51:13 21 specialists in family planning care.

14:51:15 22 THE COURT: I understand that. And this may not be the
14:51:23 23 right witness to get it. She's in charge of the whole program,
14:51:30 24 so I don't know how she can compare. Well, you could ask her
14:51:33 25 that.

14:51:34 1 MS. RATAKONDA: Okay. I'll move on.

14:51:35 2 THE COURT: You could ask her if she's familiar with
14:51:38 3 Planned Parenthood and compare the services. I don't think she's
14:51:45 4 a witness you want to ask that to, but you certainly can.

14:51:49 5 Q. (BY MS. RATAKONDA) Ms. French, isn't it true that the
14:51:58 6 women's health program was created by Texas in order to exclude
14:52:02 7 Planned Parenthood?

14:52:03 8 MR. SWEETEN: Objection, your Honor. She's asking a
14:52:05 9 question that this witness has no foundation to answer.

14:52:08 10 THE COURT: Well, we'll find out. Do you have any idea
14:52:12 11 one way or the other on that?

14:52:14 12 A. It was before my time with HHSC, but I know that the program
14:52:17 13 was created in 2013 as actions based on the legislature in 2011.

14:52:23 14 MS. RATAKONDA: All right. I pass the witness.

14:52:27 15 RE-DIRECT EXAMINATION

14:52:27 16 BY MR. SWEETEN:

14:52:31 17 Q. Very briefly, Ms. French, are you confident that if the
14:52:40 18 patients served by Planned Parenthood are -- if there are
14:52:46 19 patients excluded by Planned Parenthood, that they can be served
14:52:48 20 by the Texas women's health program if a preliminary injunction
14:52:52 21 were to be granted?

14:52:54 22 A. Yes.

14:52:55 23 Q. Okay. And why are you confident of this?

14:52:57 24 A. Because of the changes we made in Healthy Texas Women and in
14:53:01 25 family planning, and because they can see more patients than just

14:53:04 1 what may be eligible for Medicaid. And we are working to make
14:53:08 2 sure we're recruiting the best doctors into -- for OB/GYNs into
14:53:14 3 the programs. We're confident that we have great access to these
14:53:18 4 programs for all women.

14:53:19 5 Q. No further questions. Thanks.

14:53:28 6 MS. RATAKONDA: I pass the witness.

14:53:29 7 THE COURT: May the witness be excused?

14:53:31 8 MR. SWEETEN: Yes, your Honor.

14:53:34 9 THE COURT: May the witness be excused?

14:53:35 10 MR. WATKINS: Yes.

14:53:36 11 THE COURT: Okay. You may be excused, ma'am.

14:53:42 12 All right. We'll take a ten-minute break.

15:08:46 13 (Recess.)

15:08:55 14 THE COURT: You may call your witness.

15:08:59 15 MR. BIGGS: Thank you, your Honor.

15:09:00 16 At this time, defendants call Todd Giberson.

15:09:20 17 (Witness sworn.)

15:09:35 18 THE COURT: Tell us your full name and spell your last.

15:09:40 19 THE WITNESS: Todd Craton Giberson, G-I-B-E-R-S-O-N.

15:09:50 20 THE COURT: You may proceed.

15:09:51 21 TODD C. GIBERSON, called by the Defendant, duly sworn.

15:09:51 22 DIRECT EXAMINATION

15:09:51 23 BY MR. BIGGS:

15:09:52 24 Q. Thank you, your Honor.

15:09:53 25 Good afternoon, Mr. Giberson. How are you employed?

15:09:56 1 A. I work for the Office of the Attorney General.

15:10:00 2 Q. And what particular division?

15:10:02 3 A. It's called legal technical support. We do a lot of inhouse

15:10:08 4 analysis for other divisions within the agency.

15:10:11 5 Q. What is your particular title?

15:10:14 6 A. Systems Analyst.

15:10:15 7 Q. And as a Systems Analyst, what are your job duties?

15:10:20 8 A. I actually have a variety of job duties from cartography and

15:10:28 9 programming, computer programming, application development, all

15:10:33 10 sorts of things.

15:10:35 11 Q. What were you asked here to do in this particular case?

15:10:39 12 A. We were supplied with documents and including some tax

15:10:46 13 documents, and we were charged to gather information from those

15:10:50 14 documents. And I compiled two reports from the tax documents.

15:11:00 15 Q. How did you go about compiling those reports?

15:11:03 16 A. Well, in this case, there was no particular analysis

15:11:07 17 involved. It was more just reading the forms and extracting

15:11:12 18 information from them and putting them in a spreadsheet.

15:11:17 19 Q. That's it?

15:11:19 20 A. That's basically it.

15:11:20 21 Q. So essentially you just read the documents and put them on

15:11:25 22 the chart, right?

15:11:26 23 A. Yes.

15:11:29 24 Q. I'm going to show you Defendants' Exhibit 95. Do you

15:11:36 25 recognize Exhibit 95?

15:11:39 1 A. Yes, I do.

15:11:40 2 Q. What is Defendants' Exhibit 95?

15:11:44 3 A. This is a spreadsheet that was -- that came from Schedule R
15:11:53 4 of the tax Form 990 where it lists transactions with other
15:11:59 5 related organizations. So for one particular -- just looking at
15:12:04 6 the top one, Planned Parenthood Gulf Coast, their tax forms in
15:12:10 7 those three years showed a related organization, Planned
15:12:17 8 Parenthood Center for Choice, with a transaction between the two
15:12:21 9 entities, and the amount of the transaction, plus a code for the
15:12:26 10 transaction type.

15:12:28 11 Q. Let me back you up. This information came solely from the
15:12:31 12 tax returns, correct?

15:12:32 13 A. Yes.

15:12:33 14 Q. And these are tax returns that were for these particular
15:12:37 15 entities, weren't they?

15:12:39 16 A. Yes.

15:12:40 17 Q. Is any of this information not from those documents that you
15:12:46 18 reviewed?

15:12:48 19 A. No. Except for that entity ID code that we put there, but
15:12:52 20 the information itself is all from the tax form.

15:12:56 21 Q. And all of these documents combined were a substantial
15:13:02 22 amount, weren't they?

15:13:03 23 A. You mean all of the documents that you originally -- that
15:13:07 24 were provided to --

15:13:10 25 Q. All the documents you considered for the analysis --

15:13:11 1 MR. WATKINS: I'd like to get it offered.

15:13:13 2 THE COURT: Pardon me?

15:13:14 3 MR. WATKINS: We'd like to get it offered before they
15:13:16 4 keep explaining what it is. It's not in evidence.

15:13:18 5 THE COURT: No.

15:13:19 6 MR. BIGGS: Your Honor, I'm asking for a foundation for
15:13:21 7 a 1006 summary, and I will offer it.

15:13:23 8 THE COURT: Well, that's true, but you've been -- you
15:13:27 9 published it already.

15:13:29 10 MR. BIGGS: I believe the parties discussed with the
15:13:31 11 Court that we --

15:13:32 12 THE COURT: That's right. We did. But I don't think
15:13:34 13 he's giving up on an objection.

15:13:36 14 MR. WATKINS: That's right.

15:13:37 15 THE COURT: That's the problem. He's standing up and
15:13:39 16 it's not for his health. But, you know, it would help me to know
15:13:44 17 what in the hell he's talking about.

15:13:47 18 MR. BIGGS: Sure.

15:13:48 19 THE COURT: Okay.

15:13:49 20 MR. WATKINS: I do have an objection.

15:13:50 21 THE COURT: All right.

15:13:52 22 MR. WATKINS: I object to the document being admitted
15:13:53 23 for the purposes that -- may I take the witness on voir dire
15:13:56 24 about this document?

15:13:57 25 THE COURT: Well, let's let counsel, it's his witness,

15:14:00 1 let him speak a little -- let the witness speak a little English
15:14:06 2 as to what they're investigating and what its purpose was, or
15:14:12 3 something along that line. I have absolutely no idea what -- I
15:14:15 4 don't even know that -- he said that Planned Parenthood Choice is
15:14:22 5 a related entity to what? I mean, I assume and I don't know what
15:14:29 6 all of the statements are. I don't know. I can't intelligently
15:14:34 7 rule on your objection at this point.

15:14:38 8 MR. BIGGS: I'll lay some more foundation, your Honor.

15:14:40 9 MR. WATKINS: And I can't make an intelligent
15:14:42 10 objection.

15:14:44 11 Q. (BY MR. BIGGS) This information, did it come from the tax
15:14:48 12 documents of Planned Parenthood in all its different versions in
15:14:54 13 this case?

15:14:54 14 A. Yes.

15:14:55 15 THE COURT: In all of its different versions.

15:14:58 16 MR. BIGGS: All the different Planned Parenthood
15:15:00 17 entities in this case.

15:15:06 18 Q. (BY MR. BIGGS) For example, the primary entity, is that the
15:15:09 19 entity whose tax return you gleaned the information from?

15:15:13 20 A. Yes.

15:15:14 21 Q. And tax year, did you glean that from that particular
15:15:20 22 entity's tax returns?

15:15:21 23 A. Yes.

15:15:22 24 Q. How were you able to determine what tax year you were
15:15:25 25 dealing with?

15:15:25 1 A. It says -- the form itself tells you the year. It says 2012
15:15:32 2 or 2013 right on the front page of the tax return.

15:15:37 3 Q. And the column titled "related organizations," is that a
15:15:41 4 term you made up, or is that in the tax forms themselves?

15:15:44 5 A. No. That is from the tax form that the Schedule R asks for
15:15:51 6 information about related organizations.

15:15:53 7 Q. So based on your review of the documents, these were the
15:15:57 8 entities listed on those tax forms as related entities?

15:16:02 9 A. Yes.

15:16:03 10 Q. And transaction type, did you make up that code, or was that
15:16:05 11 also on the tax forms?

15:16:06 12 A. No. That's from the tax form.

15:16:08 13 Q. And the last column, amount, did you calculate that amount,
15:16:13 14 or did you just pull it directly from those tax forms?

15:16:15 15 A. I just pulled it directly from the tax form.

15:16:19 16 Q. Your Honor, at this time, I would move Defendants' 95 into
15:16:23 17 evidence.

15:16:24 18 MR. WATKINS: Objection, your Honor. Number one,
15:16:25 19 there's nothing in here having to do with compensation for fetal
15:16:31 20 tissue. And, secondly, there's nothing that tells us nor will
15:16:34 21 the tax returns tell us what the transfers of the money between
15:16:37 22 one entity is for and what they're not for. So unless we know
15:16:41 23 that, we have no idea what the relevance of those transactions
15:16:44 24 would be; so therefore, I object as the exhibit being irrelevant.

15:16:48 25 THE COURT: Well, I'm going to have to look at it to

15:16:54 1 have any idea what y'all are talking about.

15:16:56 2 MR. BIGGS: Would you like a paper copy of the exhibit,
15:16:58 3 your Honor?

15:16:58 4 THE COURT: I think that would be good; then I can look
15:17:00 5 at it.

15:17:01 6 MR. BIGGS: One moment, your Honor.

15:17:03 7 MR. WATKINS: I've got one, Judge, if you'd like.

15:17:05 8 THE COURT: Okay. Either one. Okay. Well, it's
15:18:36 9 refreshing. I have no earthly idea what this is supposed to be.
15:18:46 10 It looks like transfer of funds between several entities and the
15:18:55 11 entities -- well, I don't know if transfer of funds -- I don't
15:18:59 12 know. Just shows a bunch of figures and it's broken into the
15:19:08 13 areas where there are multiple clinics, none of which are
15:19:14 14 involved in those calculations; or if they are involved in the
15:19:19 15 calculations, it's absorbed by the shell that they work under.

15:19:25 16 MR. BIGGS: Your Honor, I don't believe -- I have not
15:19:29 17 seen any 990 forms from the individual clinics but just from the
15:19:32 18 parent organization. So any absorption of the clinics would be
15:19:38 19 reflected in the one 990 filed with the federal government, is my
15:19:43 20 understanding.

15:19:47 21 THE COURT: There wouldn't be a requirement of some
15:19:51 22 sort of IRS form for each of these clinics?

15:19:57 23 MR. BIGGS: I am unaware. I have no individualized
15:20:01 24 form for each one of them. I do have it for the parent company.

15:20:04 25 THE COURT: All right.

15:20:05 1 MR. WATKINS: My objection, your Honor, is that in each
15:20:08 2 of these instances, there's no showing of any transferred funds,
15:20:13 3 get a quick look, between Gulf Coast, Greater Texas and South
15:20:17 4 Texas, the three that they're trying to claim that are affiliated
15:20:20 5 with each other, and therefore, it's irrelevant. It doesn't show
15:20:23 6 anything about anybody paying any money for fetal tissue;
15:20:26 7 therefore, the compilation on the tax return is irrelevant to any
15:20:28 8 issue in this case.

15:20:29 9 THE COURT: He's offering it for the money showing
15:20:32 10 there that they could well afford to stay in operation. That's
15:20:35 11 what they're showing it for and I'll admit it. Let's just save
15:20:40 12 some time. We're going to have to argue it, anyway. Ninety-five
15:20:46 13 and what? What was the other one?

15:20:48 14 MR. BIGGS: The other one would be Defendants' Exhibit
15:20:50 15 180, your Honor.

15:20:52 16 MR. WATKINS: We object to 180 because these are the
15:20:54 17 salaries of the employees of the various entities, and whether
15:20:58 18 the salaries are low, high, or indifferent doesn't have anything
15:21:00 19 to do with any of the issues in the case.

15:21:01 20 THE COURT: What does the salaries have anything to do?

15:21:05 21 MR. BIGGS: It's showing that the managerial employees
15:21:07 22 of one entity are being paid by another one. So the majority of
15:21:10 23 it, the CEO's salary is coming from Gulf Coast. She's also the
15:21:14 24 CEO of, let's say, Center For Choice. She's being paid \$4,000 --
15:21:20 25 or a minimal amount, like \$4,900 by the entity that's supposed to

15:21:26 1 be employing her and separation is -- the separation of these two
15:21:28 2 entities is obviously important in this case.

15:21:31 3 THE COURT: All right. Ninety-five and 180 are
15:21:36 4 admitted. Of course, cross-examination of this witness is not
15:21:39 5 going to be able to indicate what you just said. And you're not
15:21:43 6 a witness.

15:21:46 7 MR. BIGGS: Pass the witness, your Honor.

15:21:47 8 THE COURT: I admit the exhibit. All right. He passed
15:21:53 9 the witness.

15:21:54 10 MR. WATKINS: Oh.

15:21:58 11 CROSS-EXAMINATION

15:21:58 12 BY MR. WATKINS:

15:22:06 13 Q. Let's look first at Exhibit 95. That's your exhibit, right?

15:22:13 14 A. It is.

15:22:14 15 Q. Everything on it was pulled from the tax returns of the
15:22:17 16 various entities that are listed here?

15:22:19 17 A. Yes.

15:22:19 18 Q. And the term "related organization" is a federal income tax
15:22:22 19 return.

15:22:24 20 A. The income tax returns refer to related organizations.

15:22:29 21 Q. I'm sorry. My question is that the term "related
15:22:32 22 organizations" is a federal income tax term that is put on the
15:22:36 23 form by the Feds.

15:22:38 24 A. Yes.

15:22:39 25 Q. All right. You don't have any idea whether that term is

15:22:42 1 ever used in any terms of whether or not one corporation is
15:22:44 2 related to another for any kind of attribution of liability or
15:22:48 3 attribution of one conduct relating to the other entity. All you
15:22:52 4 know is that it's a related organization under the federal income
15:22:55 5 tax term.

15:22:57 6 A. That is correct.

15:22:58 7 Q. All right. Now, then, the -- let's go to Exhibit No. 180.
15:23:09 8 How was it created?

15:23:12 9 A. I also extracted information from the tax forms. There's a
15:23:19 10 section, Section 7 on the Form 990 that lists principal
15:23:29 11 compensated persons in the entity. And so, I extract -- and they
15:23:36 12 have a listing of principals in the firm, including oftentimes
15:23:42 13 boards -- members of the board of directors who have received no
15:23:46 14 compensation, but there's a section of maybe five to seven people
15:23:51 15 that are listed as CEO or a vice-president of human resources
15:23:55 16 that show a salary. And there are multiple columns showing where
15:24:02 17 -- I'm not seeing the form in front of me now, but I'll just
15:24:06 18 describe it.

15:24:07 19 Multiple columns on the tax form that show compensation
15:24:13 20 from that agency, the one submitting the tax form, compensation
15:24:19 21 from -- reportable compensation from a related agency, and then,
15:24:26 22 a third column which is just another estimate of compensation. I
15:24:32 23 just used the two counts of reportable compensation and extracted
15:24:36 24 it from the various entities, whether Gulf Coast or Center For
15:24:42 25 Choice, in this case, and showed the amount of compensation that

15:24:47 1 was coming from the one entity, say, a primary entity providing
15:24:51 2 most of the salary, and then, a related agency -- entity
15:24:56 3 providing another part of the salary.

15:24:59 4 So when I put them together, you'll see that each two
15:25:09 5 sorted by person's name, year, and the two entities, you'll see
15:25:16 6 kind of a crisscross match between the amounts coming from one
15:25:20 7 entity or the other.

15:25:24 8 Q. And it should be. I mean, the two tax returns ought to be
15:25:29 9 mirror images of each other.

15:25:31 10 A. And they are.

15:25:32 11 Q. Okay. Now, on Exhibit 180, there is nobody mentioned on 180
15:25:36 12 other than Planned Parenthood Gulf Coast and Planned Parenthood
15:25:39 13 Center For Choice, right?

15:25:40 14 A. That's correct.

15:25:41 15 Q. There's no showing of any funds flowing between Gulf Coast
15:25:45 16 and Greater Texas.

15:25:48 17 A. Well, I can -- may I elaborate on that a little bit?

15:25:52 18 Q. No. My question on Exhibit 180, is there any showing of any
15:25:55 19 transfer of funds between Gulf Coast and Greater Texas?

15:25:57 20 A. No.

15:25:58 21 Q. Any showing of Gulf Coast and San Antonio?

15:26:02 22 A. Right.

15:26:03 23 Q. These are funds going between Gulf Coast and the other part,
15:26:07 24 and you don't know what this compensation was for. The tax form
15:26:12 25 wouldn't show you.

15:26:13 1 A. It just shows the amount.

15:26:14 2 Q. Just shows the amount. All right.

15:26:17 3 Now, let's go back to 95. Exhibits 95, are there any
15:26:26 4 showings there of funds flowing between any of the three that I
15:26:29 5 just mentioned? In other words, let's look at 1.0 at the top of
15:26:35 6 Defendants' 95. Do you see what I'm talking about? On Defendant
15:26:40 7 95, over in the left hand, "entity ID 1.0." Do you see that?

15:26:44 8 A. Yes.

15:26:44 9 Q. All right. That is Planned Parenthood Gulf Coast, right?

15:26:47 10 A. Yes.

15:26:48 11 Q. All right. And then, 1.1 is Center For Choice, right?

15:26:52 12 A. Yes.

15:26:52 13 Q. Okay. So you've got funds flowing back and forth between
15:26:58 14 those entities, but nothing in there about Greater Texas Greater
15:27:03 15 Texas Surgical Center, Planned Parenthood of South Texas,
15:27:06 16 correct?

15:27:07 17 A. Correct.

15:27:07 18 Q. And that's true all the way down. There's no showing of
15:27:11 19 funds flowing between Gulf Coast, Greater Texas and San Antonio.

15:27:17 20 A. On these reports, that is correct.

15:27:19 21 Q. All right. No further questions, your Honor.

15:27:25 22 MR. BIGGS: No redirect, your Honor.

15:27:26 23 THE COURT: All right. May the witness be excused?

15:27:29 24 MR. BIGGS: By defense, your Honor.

15:27:31 25 THE COURT: You may be excused, sir.

15:27:45 1 MR. BIGGS: Your Honor, at this time, defendants would
15:27:47 2 call Dr. Mikeal Love.

15:28:15 3 THE COURT: If you'll come forward, please, sir. This
15:28:19 4 is the clerk. She's going to administer an oath to you.

15:28:21 5 (Witness sworn.)

15:28:45 6 THE COURT: Tell us your full name and spell your last
15:28:53 7 name, please, sir.

15:28:54 8 THE WITNESS: Okay. My name is Mikeal Robert Love.
15:29:13 9 Spelling of my last name is L-O-V-E.

15:29:17 10 THE COURT: Proceed.

15:29:20 11 MIKEAL R. LOVE, called by the Defendant, duly sworn.

15:29:20 12 DIRECT EXAMINATION

15:29:20 13 BY MR. BIGGS:

15:29:21 14 Q. Good afternoon, Dr. Love.

15:29:23 15 Can you tell the Court how you are currently employed?

15:29:26 16 A. I am a self-employed obstetrician and gynecologist here in
15:29:32 17 Austin, Texas.

15:29:33 18 Q. Let's just get right into your background. Where did you go
15:29:38 19 to medical school?

15:29:39 20 A. University of Texas Health Science Center at San Antonio.

15:29:43 21 Q. Did you graduate?

15:29:44 22 A. Yes, I did.

15:29:46 23 Q. When did you graduate?

15:29:48 24 A. 1988.

15:29:50 25 Q. Did you continue your medical training after graduating from

15:29:54 1 medical school?

15:29:54 2 A. Yes, I did.

15:29:55 3 Q. How did you continue your training?

15:29:56 4 A. I went to an obstetrical and gynecologic residency at the
15:30:02 5 University of Louisville in Louisville, Kentucky.

15:30:05 6 Q. Did your residency focus on any specific specialization?

15:30:09 7 A. Obstetrics and gynecology.

15:30:12 8 Q. And that was in Louisville, Kentucky?

15:30:14 9 A. Yes.

15:30:15 10 Q. Following your residency, what did you do?

15:30:17 11 A. I moved to Austin and started a private practice.

15:30:24 12 Q. You're currently in private practice?

15:30:25 13 A. Yes, I am.

15:30:26 14 Q. Would you briefly describe your practice?

15:30:28 15 A. I'm a solo physician and my practice is basically as a
15:30:33 16 generalist OB/GYN. We handle pregnancies as well as gynecologic
15:30:40 17 issues for women.

15:30:41 18 Q. Are you board-certified?

15:30:43 19 A. Yes, I am.

15:30:44 20 Q. What are you board-certified in?

15:30:45 21 A. Obstetrics and gynecology.

15:30:47 22 Q. How long have you been board-certified?

15:30:50 23 A. Twenty-two years.

15:30:52 24 Q. Have you been affiliated with any hospitals?

15:30:55 25 A. Yes, I have.

15:30:56 1 Q. What hospitals?

15:30:57 2 A. Brackenridge and St. David's Medical Center.

15:31:00 3 Q. Have you had any other management responsibilities besides
15:31:03 4 running your practice?

15:31:05 5 A. Yes, I have.

15:31:06 6 Q. And what are those?

15:31:07 7 A. I was chairman of the medical care evaluation committee for
15:31:11 8 two years. I was chief of the OB/GYN section for two years. I
15:31:18 9 was the founding member and chairman of the CME committee at St.
15:31:23 10 David's for twelve years. And I also served as the chairman for
15:31:28 11 the CME committee for TMA for their annual convention.

15:31:34 12 Q. What was your role as the section chief?

15:31:38 13 A. We would go over new policies, procedures, different issues
15:31:46 14 that may arise in the field of obstetrics and gynecology and make
15:31:50 15 sure that if we decided on a particular issue, that it had the --
15:31:59 16 I guess, the quality standards that are necessary for good care.

15:32:05 17 Q. As section chief, did you become familiar with medical and
15:32:08 18 ethical standards in that field?

15:32:09 19 A. Yes.

15:32:12 20 Q. Besides being section chief, do you have any other role at
15:32:16 21 St. David's?

15:32:18 22 A. We did provide care to the indigent population for 15 years
15:32:24 23 through work at People's Community Clinic.

15:32:28 24 Q. You mentioned earlier you were on a CME committee. What is
15:32:31 25 a CME committee?

15:32:33 1 A. It's a committee that basically oversees continuing medical
15:32:39 2 education for the doctors on staff.

15:32:44 3 Q. In that role, did you become familiar with medical and
15:32:47 4 ethical standards?

15:32:49 5 A. Yes. As the chairman, we have to review all of the material
15:32:53 6 that's presented for a CME to make sure that it meets the
15:32:58 7 criteria set forth by our governing board, as well as make sure
15:33:03 8 there's no commercial bias.

15:33:05 9 Q. And you had that CME role also with the Texas Medical
15:33:08 10 Association?

15:33:09 11 A. Yes.

15:33:10 12 Q. Doctor, do you have any experience dealing with abortion
15:33:14 13 procedures?

15:33:14 14 A. Yes.

15:33:16 15 Q. Will you please explain to the Court your experience?

15:33:19 16 A. We were taught abortion procedures, which is essentially
15:33:24 17 surgical procedures such as a D & C and D & E in residency. We
15:33:28 18 were allowed to work with the outside providers. And I worked
15:33:34 19 with one of the largest clinics in the Kentucky area, Louisville
15:33:40 20 and Lexington, and was able to observe their procedures over a
15:33:46 21 period of time. In addition, we also do that with private
15:33:51 22 practice.

15:33:51 23 Q. How many abortion procedures would you say you observed
15:33:54 24 during residency in Louisville?

15:33:57 25 A. Observation, probably 3 to 400.

15:34:01 1 Q. And you mentioned that you actually performed abortions in
15:34:04 2 your private practice?

15:34:05 3 A. Yes.

15:34:06 4 Q. Can you please explain the abortions that you perform in
15:34:12 5 your private practice?

15:34:14 6 A. I do medically indicated termination.

15:34:16 7 Q. What does medically indicated terminations mean?

15:34:19 8 A. It's usually when the life of the mother is at risk or if
15:34:24 9 the fetus has already passed or died, I should say. Not passed
15:34:29 10 out of the body, but it's, you know, no longer viable.

15:34:33 11 Q. Are you familiar with the medical and ethical standards
15:34:36 12 surrounding abortion procedures?

15:34:38 13 A. Yes.

15:34:39 14 Q. How are you familiar with these standards?

15:34:43 15 A. Well, not only do you have the education that you receive in
15:34:47 16 residency. In addition, our governing body, American Congress of
15:34:53 17 Obstetrics and Gynecology, also puts out papers on medical
15:34:57 18 ethics, and as a physician in the state of Texas, you are
15:35:02 19 required to have so many hours of CME credit and medical ethics,
15:35:07 20 as well as it's just a part of your daily practice.

15:35:11 21 Q. Have you had a chance to review the materials in this case?

15:35:15 22 A. Yes.

15:35:16 23 Q. What specifically have you been -- have you reviewed?

15:35:20 24 A. I reviewed the eight hours of videotape, transcripts
15:35:25 25 associated with that video, as well as some laws that are federal

15:35:30 1 in origin, as well as the consent form of Planned Parenthood Gulf
15:35:39 2 Coast.

15:35:39 3 Q. Your Honor, at this time, defendants offer Dr. Mike Love as
15:35:42 4 an expert in the area of obstetrics and gynecology and medical
15:35:46 5 and ethical standards governing obstetrics and gynecological
15:35:50 6 procedures.

15:35:52 7 THE COURT: Just to get this straight.

15:35:54 8 MS. CLAPMAN: Your Honor, I would like to voir dire the
15:35:59 9 witness briefly to determine the scope of his testimony.

15:36:01 10 THE COURT: Okay. Just a minute.

15:36:32 11 You may voir dire the witness. That just means she's
15:36:38 12 going to ask you some questions.

15:36:39 13 THE WITNESS: Okeydoke.

15:36:40 14 THE COURT: Have to establish that you're an expert to
15:36:42 15 give an opinion. Go ahead.

15:36:43 16 VOIR DIRE EXAMINATION

15:36:43 17 BY MS. CLAPMAN:

15:36:45 18 Q. Good afternoon, Dr. Love.

15:36:47 19 You mentioned that you performed abortions when
15:36:50 20 medically indicated. When is the last time you did that?

15:36:56 21 A. Probably within the last few months.

15:36:58 22 Q. Okay. And how often?

15:37:02 23 A. As indicated. I mean, I don't necessarily keep tally of
15:37:06 24 them, you know, just -- I don't keep a tally of my deliveries,
15:37:11 25 either, so I don't know.

15:37:11 1 THE COURT: This is cross-examination. If you have any
15:37:14 2 voir dire questions, use them now.
15:37:16 3 Q. (BY MS. CLAPMAN) Okay. Dr. Love, have you performed D & E
15:37:23 4 procedures?
15:37:24 5 A. Yes, I have in the past.
15:37:26 6 Q. Okay. What gestational age range?
15:37:32 7 A. The latest I performed one was 19-and-a-half weeks.
15:37:41 8 Q. And I didn't see on your CV any mention of any medical
15:37:46 9 research. Have you engaged in any medical research?
15:37:49 10 A. I've done some, yes, but none that was published.
15:37:53 11 Q. Okay. And I didn't see any IRB involvement. Are you on any
15:37:58 12 IRBs?
15:37:58 13 A. No, ma'am.
15:37:59 14 Q. Okay.
15:38:02 15 MS. CLAPMAN: Your Honor, we don't object to this
15:38:03 16 witness being qualified as an OB/GYN generally. We would object
15:38:10 17 to his testifying to any research standards as beyond his
15:38:17 18 qualifications.
15:38:18 19 THE COURT: All right. That goes to weight. I
15:38:22 20 overrule the objection.
15:38:34 21 MR. BIGGS: May I inquire, your Honor?
15:38:35 22 THE COURT: What?
15:38:36 23 MR. BIGGS: I didn't know if I was waiting for you,
15:38:38 24 your Honor.
15:38:38 25 THE COURT: You never wait for me. Just go right

15:38:41 1 ahead.

15:38:41 2 DIRECT EXAMINATION (Resumed)

15:38:42 3 BY MR. BIGGS:

15:38:42 4 Q. You stated, a moment ago, that you were able to view the
15:38:45 5 materials in this case. Were you able to reach an opinion about
15:38:50 6 any ethical or medical standards that may be implicated by those
15:38:56 7 materials?

15:38:56 8 A. Yes.

15:38:57 9 Q. And what was that opinion?

15:38:59 10 A. That there was a violation of medical and ethical standards
15:39:02 11 by Planned Parenthood Gulf Coast.

15:39:07 12 Q. Let's talk about that. What specifically did you see in the
15:39:13 13 materials that raise concerns about those standards?

15:39:16 14 A. Okay. In the video, the research director stated a
15:39:25 15 willingness to have the procedure altered in order to obtain
15:39:31 16 tissue for the procurement company that was in the video.

15:39:34 17 MS. CLAPMAN: I'm going to object to this testimony
15:39:36 18 because this is testimony about research protocols that were
15:39:40 19 discussed in a research lab and -- oh, I apologize. You did not
15:39:46 20 sustain my objection to scope. I apologize.

15:39:50 21 THE COURT: Well, I understand he's testifying about
15:39:54 22 what he thought the procedures we've been talking about, and I've
15:39:57 23 heard the testimony that they're not even the procedures that are
15:40:01 24 involved. I understand that. But he's entitled to give his
15:40:04 25 opinion one way or the other.

15:40:08 1 Q. (BY MR. BIGGS) You may continue.

15:40:09 2 A. And, also, the consent form basically made statements that
15:40:14 3 were -- could be construed as inaccurate.

15:40:18 4 Q. Talk about the willingness --

15:40:20 5 THE COURT: Which -- did you just do one consent form?

15:40:23 6 THE WITNESS: There was one consent form that basically
15:40:25 7 stated that there would be no alterations of the procedure at
15:40:29 8 all.

15:40:30 9 THE COURT: You didn't get my question because I'm not
15:40:33 10 doing the questioning, but you said consent form. I've been
15:40:36 11 listening to two consent forms. Did you see just one?

15:40:40 12 THE WITNESS: I saw several consent forms. Yes, sir.

15:40:46 13 Q. (BY MR. BIGGS) Let's talk first about the alteration --
15:40:49 14 potential alteration of a procedure. What about -- withdrawn.

15:40:59 15 The statements in the video, why specifically do those
15:41:03 16 raise concerns?

15:41:05 17 A. Willingness to alter procedure basically confers intent, and
15:41:13 18 as a physician, we have a fiduciary relationship with the
15:41:17 19 patient. In other words, we have a relationship that is based on
15:41:21 20 trust with the patient's best interest in mind. Any time someone
15:41:28 21 is willing to alter a procedure to satisfy a secondary party,
15:41:33 22 then that relationship is then broken and that element of trust
15:41:38 23 can be lost.

15:41:42 24 There are complications that can arise from altering
15:41:45 25 the procedure.

15:41:48 1 Q. Let me stop there.

15:41:51 2 What complications can arise from altering a procedure?

15:41:58 3 A. When you read perinatology text, they will list

15:42:01 4 complications such as incompetent cervix with the result of

15:42:04 5 preterm labor as a complication of cervical manipulation.

15:42:10 6 Q. Let's decipher that. What is cervical -- or is it

15:42:14 7 incompetent cervix?

15:42:15 8 A. Incompetent cervix. That's a cervix that doesn't -- is not

15:42:19 9 able to maintain the pregnancy. The integrity of the collagen

15:42:24 10 tissue in the cervix has been damaged to the extent that when

15:42:29 11 pressure is put on the cervix, it begins to dilate prematurely,

15:42:34 12 and therefore, you can have premature deliveries of the infant,

15:42:40 13 possibly prior to viability, which could mean an unnecessary

15:42:44 14 loss, or a prolonged stay in the neonatal intensive care unit for

15:42:49 15 the infant.

15:42:51 16 Also, when you deliver early, there are risks and

15:42:53 17 complications associated with that, as well, for the infant.

15:42:58 18 Q. And this comes from an overdilation? Or explain that.

15:43:04 19 A. Any time you manipulate the cervix through a mechanical

15:43:09 20 means, you possibly damage the tissue of the cervix, the collagen

15:43:17 21 matrix, and that can lead to the potential for cervical

15:43:22 22 incompetence and preterm labor.

15:43:25 23 Q. Were there any statements on the video that indicated to you

15:43:29 24 that Planned Parenthood Gulf Coast staff had previously altered

15:43:36 25 procedures?

15:43:39 1 A. I don't recall exactly saying that we have altered these
15:43:42 2 procedures in the past. There may have been.

15:43:47 3 Q. Do you remember a discussion about a researcher performing
15:43:50 4 abortions?

15:43:51 5 A. Yes.

15:43:52 6 Q. Please explain that to the Court.

15:43:53 7 A. Well, the research director alluded to the fact that one of
15:43:56 8 the research professors did abortions and then, collected the
15:44:01 9 tissue to take it back to her research lab herself.

15:44:03 10 Q. Does this raise any concerns?

15:44:04 11 A. I think it raises ethical concerns because then, again, you
15:44:10 12 have interference in the patient-physician relationship. You
15:44:14 13 have a conflict of interest, and a physician has the potential
15:44:20 14 not to be able to give complete duty to the patient. It's the
15:44:26 15 obligation of the physician in this relationship to make sure
15:44:30 16 that whatever they do is in the best interest of the patient,
15:44:34 17 regardless of whatever else is going on.

15:44:37 18 Q. Based on your review of the materials in this case,
15:44:40 19 including the videotape, what types of fetal tissue was being
15:44:44 20 requested of Planned Parenthood Gulf Coast?

15:44:47 21 A. Liver, thymus, neural tissue.

15:44:53 22 Q. How would one change an abortion procedure to obtain more
15:44:57 23 intact specimens of those particular organs?

15:45:00 24 A. Most likely, they would dilate the cervix more than they
15:45:04 25 would if they were not trying to obtain intact specimens.

15:45:08 1 Q. Without getting into too much detail, would you explain why
15:45:11 2 that's necessary?

15:45:12 3 MS. CLAPMAN: Objection. Calls for speculation.

15:45:21 4 THE COURT: I'll allow the testimony.

15:45:24 5 A. I'm sorry. Could you repeat the question?

15:45:28 6 Q. (BY MR. BIGGS) How would one change an abortion procedure to
15:45:31 7 obtain more intact specimens of those particular organs?

15:45:35 8 A. You could dilate the cervix more to make sure that as you're
15:45:39 9 procuring those specimens, that you don't crush them with your
15:45:42 10 forceps or damage the tissue with your forceps. Sometimes I know
15:45:50 11 that when I'm doing these procedures, I use an ultrasound to make
15:45:53 12 sure that I'm able to get all the tissue out. You could use an
15:45:56 13 ultrasound to make sure that what you're grasping is not the
15:46:00 14 tissue that's needed.

15:46:03 15 Q. How could those changes potentially impact the patient in
15:46:07 16 the future?

15:46:08 17 A. Well, like further dilation of the cervix, again, you still
15:46:13 18 put the patient at risk in future pregnancies for the cervical
15:46:17 19 incompetence and possible preterm labor.

15:46:22 20 Q. You mentioned informed consent earlier and there being an
15:46:26 21 issue with that. Would you please explain to the Court what you
15:46:29 22 meant?

15:46:29 23 A. Well, first of all, informed consent is a conversation
15:46:33 24 between the physician and the patient. It's not just signing a
15:46:37 25 written piece of paper. Informed consent is the physician

15:46:40 1 sitting down and explaining in the language that the patient
15:46:43 2 understands the risks, benefits and complications of that
15:46:47 3 procedure. It should not be done by a staff member or someone
15:46:51 4 who is not intimately familiar with the procedure, someone who
15:46:55 5 does not perform the procedure or take care of the complications.
15:46:58 6 That's the reason you should have a physician perform this
15:47:02 7 because --

15:47:03 8 MS. CLAPMAN: I'm going to object to the relevance of
15:47:05 9 this testimony because there's no evidence that defendants relied
15:47:09 10 upon this analysis in terminating plaintiffs from Medicaid.

15:47:14 11 THE COURT: Say that again.

15:47:15 12 MS. CLAPMAN: I'm going to object to the relevance --

15:47:17 13 THE COURT: I know that part.

15:47:18 14 MS. CLAPMAN: That there's no evidence that defendants
15:47:23 15 -- there's no foundation, there's no evidence that defendants
15:47:25 16 consulted the witness' opinion in deciding to terminate Planned
15:47:30 17 Parenthood as the basis -- for Medicaid that this was any part of
15:47:32 18 the basis for the termination.

15:47:34 19 THE COURT: Well, he's being asked about his opinion in
15:47:39 20 general terms. I have not heard of any case anywhere like this
15:47:44 21 that occurred. In fact, I haven't heard of anything that did
15:47:49 22 occur within the opinions of any of the witnesses.

15:47:53 23 You may proceed.

15:47:56 24 MR. BIGGS: Thank you, your Honor.

15:48:01 25 A. I'm not sure if I answered your question completely or not.

15:48:20 1 Q. (BY MR. BIGGS) Can you briefly explain what you meant?

15:48:22 2 A. So we talked about the physician obtaining informed consent.
15:48:25 3 In addition, on one of the written consent forms, it says the
15:48:28 4 procedure will not be altered in any way. And the willingness to
15:48:34 5 alter the procedure to obtain tissue for research basically
15:48:39 6 violates that informed consent with the patient because they're
15:48:44 7 going to be something they haven't consented the patient for, and
15:48:48 8 that would be an ethical issue.

15:48:55 9 Q. So essentially what you're telling the Court is, it's not
15:49:01 10 all right to tell a patient one thing and then, do another. Is
15:49:05 11 that a fair assessment of what you said?

15:49:06 12 A. Yes, it is.

15:49:07 13 Q. Pass the witness, your Honor.

15:49:15 14 CROSS-EXAMINATION

15:49:15 15 BY MS. CLAPMAN:

15:49:18 16 Q. I won't reintroduce myself.

15:49:20 17 A. Okay.

15:49:25 18 Q. You didn't see any instance in the video that you watched of
15:49:27 19 any abortion provider expressing the intent to alter a procedure,
15:49:32 20 did you?

15:49:32 21 A. That's correct.

15:49:34 22 Q. Were you present earlier in this case when Planned
15:49:43 23 Parenthood witnesses testified that abortion-providing physicians
15:49:48 24 do not know under the protocols of Planned Parenthood Gulf Coast
15:49:52 25 whether any particular patient has consented to donation when

15:49:55 1 they perform the abortion procedure?

15:49:57 2 A. No. I was not.

15:49:58 3 Q. Okay. So you didn't consider that fact in formulating your
15:50:04 4 opinion, correct?

15:50:05 5 A. No. I did not.

15:50:06 6 Q. And there's no evidence in those videos that any
15:50:19 7 abortion-providing physician increased dilation for purposes of
15:50:24 8 facilitating donation of fetal tissue, is there?

15:50:26 9 A. Not directly, but it's implied.

15:50:30 10 Q. If I could have a "Yes" or "No" answer, please.

15:50:34 11 There's no evidence in the videos that any
15:50:39 12 abortion-providing physician increased dilation for a patient for
15:50:43 13 research purposes, correct?

15:50:48 14 A. I would say yes, there is.

15:50:53 15 Q. What would that be?

15:50:54 16 A. The research director alluded to the fact that that could be
15:50:58 17 done and they would be willing to do it, so to me, that gives
15:51:02 18 evidence that it could be done or has been done in the past,
15:51:05 19 since she stated that she worked very closely with the providers.

15:51:12 20 Q. And you were not here when this witness testified about what
15:51:15 21 she meant when she talked about altering protocols for research
15:51:19 22 purposes, correct?

15:51:20 23 A. No. I was not.

15:51:21 24 Q. Okay. So you don't know whether she was referring to
15:51:24 25 altering the abortion procedure or increasing cervical dilation,

15:51:28 1 correct?

15:51:28 2 A. No. I just know what she said on the videotape.

15:51:46 3 Q. Bear with me, please.

15:52:05 4 You're not aware of any studies or data showing that
15:52:07 5 abortion complication rates are higher for women who are donating
15:52:11 6 fetal tissue as compared to women who aren't, are you?

15:52:15 7 A. No. But I haven't done a --

15:52:17 8 Q. "Yes" or a "No," please.

15:52:18 9 A. Okay. No.

15:52:19 10 THE COURT: That's the rules.

15:52:21 11 THE WITNESS: Okay. Thank you.

15:52:22 12 THE COURT: If they want you to explain your answer,
15:52:24 13 they'll ask you again.

15:52:25 14 THE WITNESS: All righty.

15:52:26 15 THE COURT: Lawyers are full of questions.

15:52:27 16 THE WITNESS: Okay.

15:52:28 17 THE COURT: All right. Just answer "Yes" or "No" if
15:52:30 18 you can.

15:52:30 19 THE WITNESS: Yes, sir.

15:52:32 20 Q. (BY MS. CLAPMAN) Do you personally believe it is ever
15:52:38 21 ethical to conduct medical research using embryonic or fetal
15:52:43 22 tissue from abortions?

15:52:45 23 A. Yes.

15:52:50 24 Q. Do you believe that abortion should be legally permitted?

15:52:54 25 A. Yes.

15:52:55 1 Q. Under what circumstances?

15:52:58 2 A. In the life of the mother and other circumstances I'm sure
15:53:01 3 that could come up at some future point in time that I'm not
15:53:05 4 aware of.

15:53:08 5 Q. You testified in the Texas legislature in favor of HB2,
15:53:12 6 correct?

15:53:13 7 A. That's correct.

15:53:14 8 Q. And, specifically, you testified that admitting privileges
15:53:21 9 for abortion providers were necessary for patient safety,
15:53:25 10 correct?

15:53:25 11 A. That's correct.

15:53:27 12 Q. And you also testified that admitting privileges were easy
15:53:30 13 to get, correct?

15:53:31 14 A. That's correct.

15:53:34 15 Q. Yet, are you aware that the United States Supreme Court
15:53:38 16 found that after HB2 went into effect, the number of abortion
15:53:41 17 providers fell by 50 percent?

15:53:43 18 A. No. I'm not.

15:53:45 19 Q. Okay. And are you aware that the Supreme Court also held
15:53:48 20 that the requirement --

15:53:49 21 MR. BIGGS: Objection. Foundation, your Honor. He
15:53:51 22 said he doesn't know what the Supreme Court held.

15:53:53 23 MS. CLAPMAN: He said he didn't know that the Supreme
15:53:55 24 Court held a particular fact.

15:53:56 25 THE COURT: I was here. You can ask him that.

15:54:04 1 Q. (BY MS. CLAPMAN) And are you aware that the Supreme Court
15:54:06 2 held that the requirement for admitting privileges for abortion
15:54:09 3 providers offered no medical benefit?
15:54:11 4 A. No. I'm not aware of that.
15:54:15 5 Q. And you also testified in the Texas legislature in favor of
15:54:20 6 a law requiring women to have an ultrasound and hear a
15:54:24 7 description of the embryo or fetus 24 hours before an abortion,
15:54:27 8 correct?
15:54:28 9 A. Among other requirements, yes.
15:54:32 10 Q. Have you advocated -- have you advocated for other
15:54:37 11 restrictions on abortion?
15:54:40 12 A. Not restrictions, no.
15:54:42 13 Q. Okay. Have you ever advocated against any particular
15:54:47 14 restriction on abortion?
15:54:48 15 A. No.
15:54:51 16 Q. Do you consider yourself as having a moral obligation to
15:54:55 17 promote a culture of life?
15:54:56 18 A. Yes.
15:54:58 19 Q. And that's part of what has motivated you to support
15:55:02 20 abortion restrictions in the past, correct?
15:55:04 21 A. Not necessarily.
15:55:07 22 Q. That is not any part of what has motivated you?
15:55:10 23 A. No. What motivates me is the fact that there are two
15:55:13 24 separate standards. One for women obtaining elective
15:55:18 25 abortions --

15:55:18 1 Q. I'm sorry. I just asked for a "Yes" or "No" question. So
15:55:20 2 the answer is "No"?

15:55:21 3 MR. BIGGS: I'd request --

15:55:22 4 A. I can't answer that question --

15:55:23 5 THE COURT: Hold on. I think three is too many to
15:55:29 6 talk. You ask a question, he's trying to object. I'm going to
15:55:34 7 have you finish your answer.

15:55:36 8 A. Okay. You asked an open-ended question, and my answer is
15:55:39 9 that there are two sets of standards: One for those obtaining
15:55:43 10 elective terminations of pregnancy versus those who obtain
15:55:47 11 medical-indicated terminations of pregnancy --

15:55:47 12 Q. (BY MS. CLAPMAN) With all due respect, I asked a "Yes" or
15:55:50 13 "No" question --

15:55:50 14 MR. BIGGS: Objection, your Honor --

15:55:51 15 THE COURT: I said he could finish it.

15:55:53 16 MS. CLAPMAN: Okay. Apologize.

15:55:54 17 A. And my purpose in work with the Texas legislature is
15:55:59 18 actually to make sure that women have one set of standards, not
15:56:02 19 two, because as a physician, I think it's ridiculous that there
15:56:07 20 are two sets of standards because as a physician taking emergency
15:56:11 21 call, I take care of the complications from the surgical
15:56:15 22 abortions in the emergency room, and I have to deal with that
15:56:19 23 when the abortion provider is not able to have privileges. So
15:56:23 24 there's nothing wrong with them having privileges to come in and
15:56:25 25 take care -- because the rest of us as surgical providers in

15:56:29 1 whatever field have to maintain privileges to take care of our
15:56:32 2 own complications when they arise after surgery. And there's
15:56:36 3 nothing wrong with having the same standard for all physicians
15:56:39 4 who perform surgical care for the individual, whether it's
15:56:43 5 elective termination, or a gallbladder, or brain surgery.

15:56:49 6 MS. CLAPMAN: Pass the witness.

15:56:53 7 RE-DIRECT EXAMINATION

15:56:53 8 BY MR. BIGGS:

15:56:58 9 Q. Dr. Love, would it be reasonable to assume that a researcher
15:57:03 10 performing abortions for their own research needs would know that
15:57:06 11 the patient has donated fetal tissue?

15:57:09 12 MS. CLAPMAN: Objection. Calls for speculation.

15:57:15 13 THE COURT: To that question, it would be gross --

15:57:19 14 MS. CLAPMAN: And, I'm sorry, it's beyond the scope of
15:57:21 15 the direct or the cross because there's been no testimony about
15:57:23 16 research protocols.

15:57:37 17 THE COURT: I don't recall any cross-examining on that.

15:57:44 18 MR. BIGGS: Your Honor, may I be heard on this point?

15:57:46 19 I do believe she brought up whether or not he knew that if he
15:57:51 20 heard the testimony about research -- or about abortion providers
15:57:54 21 not knowing whether or not the individual has performed -- or has
15:57:58 22 donated tissue. That was brought up on cross-examination, your
15:58:01 23 Honor.

15:58:02 24 MS. CLAPMAN: It was a narrow factual question. It
15:58:03 25 didn't reopen that issue. The Court opened it.

15:58:09 1 THE COURT: Well, I've heard testimony that consent and
15:58:16 2 then, there's a special consent for the collection of tissue -- I
15:58:24 3 don't know if the Doctor's seen that or not -- and that that's
15:58:30 4 not ever shown to the person that does the surgery. And your
15:58:40 5 question is what?

15:58:41 6 MR. BIGGS: Would it be reasonable to assume that a
15:58:43 7 researcher who's performing the abortion for their research needs
15:58:46 8 would know who had decided to donate fetal tissue.

15:58:52 9 MS. CLAPMAN: That calls for speculation.

15:58:54 10 THE COURT: The Lord might know that, but no witness is
15:58:57 11 going to know that, would it be reasonable to assume.

15:59:01 12 MR. BIGGS: I'll move on, your Honor.

15:59:02 13 THE COURT: Okay.

15:59:03 14 Q. (BY MR. BIGGS) What statements specifically were the most
15:59:11 15 concern to you on that video?

15:59:16 16 MS. CLAPMAN: This is beyond the scope of the cross,
15:59:18 17 your Honor.

15:59:18 18 THE COURT: I sustain the objection. I don't know that
15:59:22 19 it's totally beyond cross, but that question just asks for an
15:59:28 20 opinion on a statement. So you're going to have to be more
15:59:32 21 specific on that. He's been allowed to say what he thought after
15:59:36 22 looking at the video.

15:59:38 23 Q. (BY MR. BIGGS) You were asked a lot about your own views,
15:59:42 24 your personal views. Does that impact the opinions that you are
15:59:47 25 providing the Court with today?

15:59:50 1 A. I'm sure it has some element there, however, you know, the
15:59:55 2 fact is that medical standards are a high standard. It's a
16:00:02 3 privilege to be a physician and take care of patients, and my
16:00:07 4 feeling is that it doesn't matter who it is, whether it's Planned
16:00:11 5 Parenthood Gulf Coast or physicians in my own hospital, when they
16:00:15 6 abuse their privilege of being able to take care of patients,
16:00:18 7 then they should be held to -- accountable for their lack of
16:00:23 8 maintaining that standard.

16:00:24 9 MR. BIGGS: Pass the witness, your Honor.

16:00:28 10 MS. CLAPMAN: No further questions, your Honor.

16:00:30 11 THE COURT: Did you see this video before December 20,
16:00:35 12 2016?

16:00:36 13 THE WITNESS: No, sir. I have not.

16:00:38 14 THE COURT: May the witness be excused?

16:00:41 15 MR. BIGGS: By the defense, your Honor.

16:00:44 16 MS. CLAPMAN: Yes, your Honor.

16:00:44 17 THE COURT: You may be excused, sir.

16:00:48 18 Call your next witness.

16:00:52 19 MR. SWEETEN: Your Honor, we have one more witness,
16:00:57 20 Jami Snyder from the Texas Medicaid. I think she's going to be
16:01:02 21 ready in about five minutes or so. We can get her in here pretty
16:01:07 22 quickly. If we could just have a short -- a short break to get
16:01:11 23 her ready to come in and give the information, your Honor.

16:01:13 24 THE COURT: Okay.

16:01:14 25 MR. WATKINS: Your Honor, may we just approach during

16:01:17 1 that time?

16:01:18 2 THE COURT: You may.

16:01:30 3 (At the bench, on the record.)

16:01:33 4 MR. WATKINS: We need to approach, Judge, because I
16:01:35 5 don't understand something. You asked us to do something to our
16:01:37 6 exhibit list and provide you with additional -- different exhibit
16:01:40 7 list than we did with more explanation in the column about what
16:01:44 8 the exhibit's about, and I'm trying to figure out how we do that.
16:01:48 9 Or do you still care about that?

16:01:52 10 THE COURT: The exhibit list.

16:01:54 11 MR. WATKINS: Yeah. In other words, I understood that
16:01:57 12 you felt there was kind of a paucity. Our exhibit list has a
16:02:01 13 column that tells you what that exhibit is.

16:02:02 14 THE COURT: I think somebody did that. Alexis.

16:02:09 15 THE CLERK: Yes, sir.

16:02:11 16 THE COURT: Did you -- you didn't ask anything about
16:02:15 17 the exhibit list. You asked about the witness list, didn't you?

16:02:17 18 THE CLERK: I asked about a witness list. Yeah.

16:02:19 19 THE COURT: Now, tell me about the exhibit list.

16:02:21 20 MR. WATKINS: Well --

16:02:22 21 THE COURT: I told you what I wanted was the
16:02:27 22 breakdown -- there was some evidence but a breakdown between
16:02:31 23 these clinics and the patients they had that had -- and I don't
16:02:40 24 really care about how many procedures or how many enrolls. I
16:02:44 25 just need to know the population of these clinics and, of course,

16:02:47 1 the added population for -- I can add on the other. That's one
16:02:53 2 of the things.

16:02:55 3 MR. WATKINS: And we're doing that.

16:02:57 4 THE COURT: And on theirs, I wanted -- they said they
16:03:04 5 had three state clinics, and I wanted to know the number and
16:03:07 6 location of their clinics.

16:03:11 7 MR. WATKINS: Then I misunderstood and I'm not going to
16:03:13 8 spend any time enhancing our description of our exhibits. I just
16:03:17 9 misunderstood what you wanted.

16:03:19 10 THE CLERK: Excuse me, Judge. Christie just reminded
16:03:21 11 me that you asked for a description for the exhibits that were
16:03:29 12 given.

16:03:29 13 THE COURT: Yeah, well, this is not going to help us
16:03:32 14 very much, but I assume that the --

16:03:37 15 THE CLERK: Well, these things were going to be filed,
16:03:41 16 right?

16:03:41 17 MR. WATKINS: Correct. And we have additional ones,
16:03:43 18 both for us and for the state, where there's a more fulsome
16:03:47 19 description of each exhibit. I could show that to the Court to
16:03:50 20 see if you think that's -- it's sufficient.

16:03:54 21 THE CLERK: What they provided to me on the jump drive
16:03:58 22 is more descriptive and it shows --

16:04:02 23 MR. SWEETEN: What they provided or what we provided?

16:04:06 24 MR. BIGGS: We did --

16:04:07 25 MR. SWEETEN: Oh, we both did. Okay.

16:04:07 1 MR. BIGGS: We followed the Fifth Circuit's rules for
16:04:08 2 the naming.

16:04:08 3 THE CLERK: Right. And I can print that for the Court.
16:04:14 4 And I was actually going to print it for the CM/ECF exhibits.

16:04:25 5 THE COURT: Well, the only thing I can say is, one of
16:04:29 6 the things I'm going to ask you tonight when you come back
16:04:33 7 tomorrow to make your statements is I want you to emphasize the
16:04:40 8 declarations that both of you have filed as to the importance and
16:04:44 9 the identity of that declaration by number or however you want to
16:04:50 10 do it. The other is whatever exhibits that you're relying on,
16:04:56 11 then I'll probably need a better number, better description.

16:05:01 12 Just kind of like a jury trial when you have a thousand
16:05:05 13 exhibits and you tell the jury you want them to look at three or
16:05:09 14 four or five, as they say, the best exhibits, but, you know,
16:05:16 15 you've got hundreds of exhibits here and I have no idea what they
16:05:20 16 are.

16:05:23 17 You know, if this was -- this is a temporary injunction
16:05:27 18 is to see whether or not things will be set the same until you
16:05:36 19 could have some real discovery and get a trial. I agreed to have
16:05:45 20 -- I gave y'all three days to make an intelligent decision on
16:05:48 21 that because I don't know when I could get you to trial. I don't
16:05:53 22 know how long you're going to need to prepare for the trial. But
16:05:59 23 I'll take all the description that y'all can give so that I
16:06:04 24 can --

16:06:05 25 MR. WATKINS: I understand.

16:06:06 1 THE COURT: -- select what we're doing.

16:06:09 2 MR. WATKINS: Do you have any objection to us splitting

16:06:10 3 the statements tomorrow between more than one lawyer?

16:06:14 4 THE COURT: No. That's your business, but you do that

16:06:26 5 the way you want.

16:06:27 6 MR. WATKINS: Okay. Thank you, Judge.

16:06:29 7 MR. SWEETEN: Thank you.

16:06:36 8 THE COURT: Let me know when your witness is here.

16:06:40 9 MR. SWEETEN: I think very shortly. I'll check right

16:06:43 10 now.

16:06:43 11 THE COURT: All right.

16:06:44 12 MR. WATKINS: This is the additional stuff that you

16:06:46 13 wanted on clinics, and patients, and stuff like that there. And

16:06:51 14 we also did what they do at each clinic.

16:06:54 15 THE COURT: That's right. The services.

16:06:56 16 MR. WATKINS: Yeah.

16:06:57 17 THE COURT: Yeah. That's what I need. Do that when

16:07:02 18 you make your statements tomorrow.

16:07:03 19 MR. WATKINS: Oh, okay.

16:15:36 20 (Recess.)

16:15:58 21 THE COURT: You may call your witness.

16:16:00 22 MS. SANDMAN: Your Honor, if I may just briefly before

16:16:03 23 the Court proceeds with that.

16:16:05 24 THE COURT: Sure.

16:16:05 25 MS. SANDMAN: The state has just handed us a document

16:16:07 1 which, I think, is responsive to the information that the Court
16:16:10 2 has requested from them, and they indicated that they proposed to
16:16:12 3 use that with this witness. We have no objection to that, but my
16:16:16 4 request would be, can we continue with this witness tomorrow so
16:16:19 5 that we can have a chance to be familiar with the document
16:16:23 6 they're proposing to use with her, which wasn't previously
16:16:25 7 disclosed to us --

16:16:26 8 THE COURT: This is their last witness.

16:16:29 9 MR. STEPHENS: It is, your Honor.

16:16:30 10 THE COURT: I'm going to finish tonight.

16:16:32 11 MS. SANDMAN: Your Honor, we do have some rebuttal
16:16:34 12 witnesses that we will be calling tomorrow, but we think that
16:16:36 13 will be relatively short --

16:16:38 14 THE COURT: In the nature of rebuttal, who are you
16:16:40 15 going to be calling?

16:16:41 16 MS. SANDMAN: We have a rebuttal witness -- these were
16:16:43 17 both previously disclosed rebuttal witnesses --

16:16:46 18 THE COURT: I saw that. But I --

16:16:48 19 MS. SANDMAN: One is --

16:16:49 20 THE COURT: I've just assumed that you've put your --

16:16:51 21 MS. SANDMAN: One is an --

16:16:53 22 THE COURT: -- information first.

16:16:55 23 MS. SANDMAN: One is an ethicist, your Honor,
16:16:57 24 responding to the issues that were raised by the state's
16:17:00 25 ethicist. And one is a witness on irreparable injury in the

16:17:03 1 Medicaid program responding to the testimony just a few moments
16:17:05 2 ago, the additional testimony that we understand the state would
16:17:09 3 be eliciting now.

16:17:10 4 THE COURT: Well, irreparable harm was an issue for
16:17:15 5 direct evidence. I don't know why you would keep a rebuttal on
16:17:22 6 an element of temporary injunction.

16:17:27 7 MS. SANDMAN: Your Honor, if I could clarify what I
16:17:28 8 intended to say there. I should not have said irreparable
16:17:32 9 injury. We believe that that has been established by our
16:17:34 10 testimony on direct as we're obligated to do. However, we do
16:17:37 11 want the opportunity to bring in this witness to respond to the
16:17:40 12 additional information about the capability of other Medicaid
16:17:45 13 providers in the state to purportedly absorb our patients. We
16:17:49 14 believe that is not correct, and we think that we are entitled to
16:17:53 15 opportunity to put this in through a rebuttal witness.

16:17:54 16 THE COURT: Well, that was in your papers and in your
16:17:59 17 direct testimony. I fully anticipated being able to listen to
16:18:07 18 both of you in the closing arguments because of the volume of
16:18:18 19 papers you put here and the, literally, hundreds of exhibits that
16:18:25 20 you've put in that I haven't seen. Of course, it's okay with the
16:18:31 21 plaintiff because you'd like the injunction until I can get a
16:18:35 22 report out, but I fully intended to make up my mind on the
16:18:42 23 temporary injunction.

16:18:45 24 I could see it's impossible. I couldn't even get
16:18:48 25 through the exhibits in a week. But it just better be rebuttal.

16:18:55 1 If it's not, I'll sustain every objection they make. Since we

16:19:01 2 will not finish tonight, put on yours, we'll see where we are.

16:19:09 3 You want to wait until tomorrow?

16:19:13 4 MS. SANDMAN: Your Honor, only because this document

16:19:14 5 was -- what they're proposing to use with the witness was just

16:19:17 6 provided to us a few moments ago in response to the Court's

16:19:20 7 request. So given that we're continuing until tomorrow, anyway,

16:19:24 8 my request would be that we have the opportunity to cross-examine

16:19:27 9 the witness, based on that document tomorrow. Whether that means

16:19:32 10 the direct going tomorrow or the direct going today, my point is

16:19:34 11 we should have the opportunity to be familiar with the document.

16:19:40 12 THE COURT: Y'all are familiar with all your other

16:19:43 13 documents?

16:19:45 14 MS. SANDMAN: We're doing our best, your Honor.

16:19:47 15 THE COURT: All right. We'll recess till 9:00 in the

16:19:50 16 morning.

16:19:54 17 Counsel, it's important tomorrow that we have some time

16:19:58 18 for final discussions. Now, I'm going to be in criminal court

16:20:02 19 sentencing, I don't know, how many? A lot of people Friday. So

16:20:10 20 I'm meeting with my probation officers on those tomorrow

16:20:13 21 afternoon. So it's to both of your detriment if your closing

16:20:22 22 remarks are going to be ten minutes. But that may be all that

16:20:25 23 you have.

16:20:25 24 (Proceedings adjourned.)

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